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No. 85-____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

AMOCO PRODUCTION COMPANY, ARCO ALASKA, INC., EXXON CORPORATION, MOBIL EXPLORATION & PRODUCING SERVICES, INC., SHELL WESTERN E & P, INC., SOHIO ALASKA PETROLEUM COMPANY, TEXACO, INC., AND UNION OIL COMPANY OF CALIFORNIA,

Petitioners,

v.

PEOPLE OF THE VILLAGE OF GAMBELL, PEOPLE OF THE VILLAGE OF STEBBINS, AND NUNAM KITLUTSISTI, DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

Section 810(a) of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. § 3120(a), requires federal agencies to evaluate whether any "disposition" of lands owned by the Federal government "in Alaska" would "significantly restrict subsistence." If so, the agency must give notice of that fact, conduct hearings and make findings that, *inter alia*, the proposed disposition has been modified to reduce or remove such effects. Acting pursuant to its construction of Section 810, the Ninth Circuit has enjoined exploration activities in two federal Outer Continental Shelf (OCS) leasing areas in the Bering Sea.

In one area, leasing had proceeded without an explicit evaluation under ANILCA that leasing and subsequent activities would not significantly restrict subsistence, although analyses under other environmental statutes revealed that there would be no such effects. In the other, an explicit ANILCA evaluation had concluded that such restrictions would not occur during either leasing or exploration, but might occur at the final development/production stage of the project, and Interior had deferred the notice, hearings, and findings required by ANILCA until its consideration of that final stage. In both instances, the Court of Appeals left undisturbed the District Court's findings that the exploration, which it had refused to enjoin, would not restrict subsistence uses or otherwise irreparably injure plaintiffs and that subsistence could be fully protected by compliance with ANILCA in subsequent administrative proceedings.

Accordingly, the questions presented in this case are as follows:

1. Whether the Ninth Circuit erred in not following *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982), when it mandated an injunction solely on the basis of purported violations of ANILCA, notwithstanding the district court's findings that plaintiffs would not be irreparably injured by the continuation of the enjoined operations and that Interior could comply with the statute prior to the possibility of any such injury?

2. Whether the Ninth Circuit erred in (a) holding that Section 810 of ANILCA applies to the federal OCS; (b) determining that neither federal OCS leasing nor exploration can proceed until there has been full compliance with Section 810's procedural requirements, even though neither of those activities would restrict subsistence; and (c) retroactively applying these unprecedented rulings to previously issued OCS leases?

PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings below are all identified in the caption.[1] Petitioners understand that Secretary Hodel and the Department of the Interior will also petition for a writ of certiorari to review the same decision addressed by this petition.

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[1]Pursuant to Rule 28.1, petitioners' parent companies, subsidiaries and affiliates are set forth in Appendix E (A64).

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

OPINIONS BELOW 1

JURISDICTION 2

STATUTES 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 8

I. THE NINTH CIRCUIT'S HOLDING THAT A "SUBSTANTIVE PROCEDURAL VIOLATION" OF AN ENVIRONMENTAL STATUTE PER SE MANDATES AN INJUNCTION CONFLICTS WITH THIS COURT'S DECISION IN WEINBERGER V. ROMERO-BARCELO 9

II. THE LOWER COURT INCORRECTLY APPLIED ANILCA TO THE LEASING OF OCS LANDS OFFSHORE ALASKA 13

A. The Ninth Circuit Erroneously Applied Section 810 of ANILCA to the OCS 15

B. The Lower Court's Decision Disregards the Distinct Stages of the OCS Leasing Process and Thus Conflicts with This Court's Decision in *Secretary of the Interior v. California* 21

C. The Ninth Circuit's Construction of ANILCA Should Not Apply Retroactively 23

CONCLUSION 26

TABLE OF AUTHORITIES

CASES	Page(s)
Alaska v. Andrus, 580 F.2d 465 (D.C. Cir.), *vacated in part on other grounds as moot*, 439 U.S. 922 (1978)	12
Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris, 463 U.S. 1073 (1983)	25
California v. Watt, 712 F.2d 584 (D.C. Cir. 1983)	8
Chevron Oil Co. v. Huson, 404 U.S. 97 (1971)	23, 24, 25
City of Loc Angeles Department of Water and Power v. Manhart, 435 U.S. 701 (1978)	25
City of Tenakee Springs v. Block, No. 84-3883 (9th Cir., Dec. 20, 1985)	13
Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473 (1981)	20
Inupiat Community of the Artic Slope v. United States, 548 F. Supp. 182 (D. Alaska 1982), *aff'd on other grounds*, 746 F.2d 570, *cert. denied*, 106 S. Ct. 68 (1985)	20
Kleppe v. Sierra Club, 427 U.S. 390 (1976)	12
Kunaknana v. Clark, 742 F.2d 1145 (9th Cir. 1984)	14
Massachusetts v. Watt, 716 F.2d 946 (1st Cir. 1983)	12
Save our Ecosystems v. Clark, 747 F.2d 1240 (9th Cir. 1984)	13
Secretary of the Interior v. California, 464 U.S. 312 (1984)	6, 15, 16, 22, 23
Sierra Club v. Hennessy, 695 F.2d 643 (2d Cir. 1982)	12
The Steamboaters v. FERC, No. 83-7444 (9th Cir., Dec. 5, 1985)	13

Table of Authorities Continued

	Page
Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 569 F.2d 330 (5th Cir. 1978)	18
United States v. California, 332 U.S. 9 (1947)	20
United States v. Holt State Bank, 270 U.S. 49 (1926)	20
United States v. Lambert, 695 F.2d 536 (11th Cir. 1983)	12
United States v. Louisiana, 339 U.S. 699 (1950)	20
United States v. Maine, 420 U.S. 515 (1975)	16
United States v. Texas, 339 U.S. 707 (1950)	20
Village of Akutan v. *Hodel*, No. A 85-701 (D. Alaska, January 13, 1986), appeal pending, No. 86-3512 (9th Cir., notice filed January 13, 1986)	13, 16
Village of Gambell v. Clark, 746 F.2d 572 (9th Cir. 1984)	1, *passim*
Village of Gambell v. Hodel, 774 F.2d 1414 (9th Cir. 1985)	2, *passim*
Walters v. National Association of Radiation Survivors, ___ U.S. ___, 105 S. Ct. 3180 (1985)	7
Watt v. Energy Action Education Foundation, 454 U.S. 151 (1981)	7, 15
Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982)	8, 9, 10, 11, 12, 13
Wisconsin v. Weinberger, 745 F.2d 412 (7th Cir. 1984)	12

STATUTES

Alaska Native [illegible]ns Settlement Act, 43 U.S.C. § [illegible]01, *et. seq.*	18, 19
43 U.S.C. § [illegible]603(b)	19
43 U.S.C. § 1603(c)	19
Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3101(c)	20

Table of Authorities Continued

	Page
16 U.S.C. § 3102(2), Section 102(2)	3, 13, 16
16 U.S.C. § 3102(3), Section 102(3)	3, 13, 16
16 U.S.C. § 3120(a), Section 810(a)	*passim*
Coastal Zone Management Act, 16 U.S.C. § 1456(c)(1), Section 307(c)(1)	22
Endangered Species Act, 16 U.S.C. § 1531	5
National Environmental Policy Act, 42 U.S.C. § 4321	5
Outer Continental Shelf Lands Act, 43 U.S.C. § 1301(a)(2)	18
43 U.S.C. § 1311(a)	17, 18
43 U.S.C. § 1331	6, 16
43 U.S.C. § 1332(1)	17
43 U.S.C. § 1332(3)	20
43 U.S.C. § 1332(3)(1)	15
28 U.S.C. § 1254(1)	2
28 U.S.C. § 2101(c)	2
Submerged Lands Act, 43 U.S.C. § 1301	16, 18
REGULATIONS	
43 C.F.R. § 1601.0-5(i)	24
LEGISLATIVE HISTORY:	
124 Cong. Rec. 19,571 (1978)	17
125 Cong. Rec. 11,128 (1979)	17
125 Cong. Rec. 11,170 (1979)	16

Table of Authorities Continued

Page

MISCELLANEOUS

Convention on the Continental Shelf, Art. II, 1, 15 U.S.T. 471, T.I.A.S. 5578 ..... 18, 20

Minerals Management Service, Federal Offshore Statistics (Sept. 1984) 5, 8, 24

10 Fed. Reg. 12303 (Oct. 2, 1945), 59 Stat. 884 . 18

49 Fed. Reg. 10058 (March 16, 1984) 5

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PEOPLE OF THE VILLAGE OF GAMBELL, PEOPLE OF THE VILLAGE OF STEBBINS, AND NUNAM KITLUTSISTI, DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINIONS BELOW

Two opinions of the United States Court of Appeals for the Ninth Circuit are directly relevant to this petition. The first, *Village of Gambell* v. *Clark*, 746 F.2d 572 (9th Cir. 1984) (hereafter *Gambell I*), was

issued on November 2, 1984, and is reprinted at Appendix A. (A1). The second, which gives rise to this petition, was filed on October 25, 1985. It is captioned *Village of Gambell* v. *Hodel,* 774 F.2d 1414 (9th Cir. 1985) (*Gambell II*), and is reprinted at Appendix B. (A23). The opinion of the United States District Court for the District of Alaska in *Gambell II* is reprinted at Appendix C. (A55). It was filed on May 23, 1985, and is unreported.

JURISDICTION

This Court has jurisdiction to issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. § 1254(1). The Ninth Circuit's judgment was entered on October 25, 1985, and is reprinted at Appendix D. (A63a). This petition is timely. See 28 U.S.C. § 2101(c).

STATUTES

Section 810(a) of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. § 3120(a), provides:

> In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public

> lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency--
>
> (1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 3115 of this title;
>
> (2) gives notice of, and holds, a hearing in the vicinity of the area involved; and
>
> (3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Section 102(3) of ANILCA, 16 U.S.C. § 3102(3), defines "public lands" as

> land[s] situated in Alaska which, after December 2, 1980, are Federal lands

with three exceptions not directly relevant here.

Section 102(2) of ANILCA, 16 U.S.C. § 3102(2), in turn, defines "Federal Lands" as

> lands the title to which is in the United States after December 2, 1980.

STATEMENT OF THE CASE

On March 4, 1983, the Villages of Gambell and Stebbins filed a complaint seeking an injunction prohibiting the Department of the Interior from conducting Outer Continental Shelf (OCS) Lease Sale No. 57 in the Norton Sound region of the Bering Sea. Plaintiffs asserted that the sale would contravene their aboriginal title to the lands in issue, fail to comply with Section 810 of ANILCA, 16 U.S.C. § 3120, and violate the trust responsibilities owed to them by the Secretary of the Interior. Both the district court and the Ninth Circuit denied plaintiffs' motion preliminarily to enjoin the sale and it went forward on March 15, 1983. Fifty-nine tracts were leased for $317,873,372.

On April 11, 1983, the district court entered summary judgment for the federal defendants and six industry intervenors (all of whom are petitioners here) who had purchased leases at the sale. On November 2, 1984, the Ninth Circuit affirmed as to the district court's rejection of plaintiffs' aboriginal title and trust claims, but reversed its holding that Section 810 of ANILCA does not apply to the federal OCS. *Gambell I.* (A1). The court remanded the case to the district court to determine whether "the proper remedy is to maintain the status quo unless and until the Secretary complies with Section 810." (A21). Six months after this remand, on April 4, 1985, plaintiffs filed a motion for a preliminary injunction against 1985 exploratory drilling in Norton Sound.

On April 23, 1985, the Village of Gambell and Nunam Kitlutsisti, an organization representing Alas-

kan Native interests, filed a new action alleging that OCS Lease Sale No. 83 in the Navarin Basin of the Bering Sea had been conducted in violation of Section 810 of ANILCA. That sale had taken place in April 1984 without challenge and resulted in the leasing of 163 tracts lying between 250 and 400 miles offshore, for a total payment of $516,317,331.[1]

The plaintiffs simultaneously requested a preliminary injunction against the then-imminent exploration planned for certain Sale No. 83 tracts. Seven industry intervenors (all of whom are petitioners here) intervened as defendants to protect their interests in their leases. Prior to plaintiffs' complaint, these intervenors had made irrevocable financial commitments to spend more than $60 million for 1985 exploration. (A51).

On May 23, 1985, the district court ruled upon plaintiffs' motions for preliminary injunctions as to both Sale Nos. 57 and 83 exploration. (A55). Relying on the Ninth Circuit's construction of ANILCA in *Gambell I*, it held that plaintiffs had established a likelihood of success on their ANILCA claims because

(1) As to Sale No. 83, an explicit evaluation had not been prepared under ANILCA regarding the sale's potential impacts upon subsistence (A58), although evaluations under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, the Endangered Spe-

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[1]High bids of $108,174,000 were also received on 17 additional tracts that are claimed by both the United States and the U.S.S.R. See Minerals Management Service, Federal Offshore Statistics 14-15 (Sept. 1984). Interior is holding the 20% deposits associated with the bids on those tracts in escrow pending further discussions with the U.S.S.R. 49 Fed. Reg. 10058, 10065-66 (March 16, 1984).

cies Act (ESA), 16 U.S.C. § 1531, and the OCS Lands Act, 43 U.S.C. § 1331 (OCSLA), all showed that no stage of Navarin Basin operations would significantly restrict subsistence (A61-62); and

(2) As to Sale No. 57, Interior's explicit ANILCA evaluation (prepared after *Gambell I*) certified that no subsistence restrictions were likely during the leasing or exploration stages of the sale, but found that such restrictions could occur in the final production/development stage;[2] the court ruled that such a finding required compliance, at the leasing stage, with the notice, hearing and findings requirements of Section 810(a)(1)-(3). (A61).

Notwithstanding its findings on the merits, the district court denied plaintiffs' motions for injunctive relief on the ground that the balance of irreparable harm did not favor an injunction, that later operations on the OCS were subject to the Department's continuing supervisory authority which could be exercised to guard the subsistence interests protected by ANILCA, and that the public interest would be disserved by grant of the requested injunction. (A62-63).

Plaintiffs sought an emergency injunction pending appeal. On June 6, a Ninth Circuit motions panel (Sneed, Norris, Nelson, C.JJ.) denied that motion.[3]

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[2]*See generally Secretary of the Interior* v. *California*, 464 U.S. 312 (1984), for a full exposition by this Court of the division of OCS projects into leasing, exploration and production stages.

[3]The motion panel conditioned its order on petitioners' submission of a "Hold Harmless Agreement" to compensate plaintiffs in the event that 1985 exploratory drilling caused any significant restriction of their subsistence uses of the OCS. Such an agreement was submitted on June 13, 1985, and was approved by the court with two revisions on June 21.

Petitioners thereafter conducted exploration in both the Norton Sound and Navarin Basin and have now terminated operations in both areas for the winter.

On October 25, a different panel of the Ninth Circuit (Alarcon, Praegerson, C.JJ.; Judge Dimmick, D.J., dissenting) reversed the district court and remanded with directions "to enter a preliminary injunction enjoining all activities in connection with Lease Sale 57 and Lease Sale 83 . . . ." *Gambell II*. (A47). The panel affirmed the district court's holding that plaintiffs were likely to establish a violation of Section 810 as to both sales, but held that the district court misapplied the law of the circuit by requiring plaintiffs to prove irreparable harm and by balancing the need for an injunction against the harm resulting from one. Instead of permitting the district court to employ these traditional equitable tests, the court ruled that proof of a "substantive procedural violation" of an environmental statute always entitles a plaintiff to an injunction (A36), unless it would do more environmental harm than good or unless it interferes with a narrow class of long-term government contracts (A40).[4]

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[4]Although 1985 operations are completed, the Ninth Circuit's ruling applies to those of future years. Moreover, the Ninth Circuit's rulings as to plaintiffs' right to injunctive relief and as to the construction of ANILCA are tantamount to final dispositions, which, unless reversed by this Court, will be binding on the merits. Thus, this is an appropriate case for review by this Court even though it arises on motions for preliminary injunctions. See *Walters* v. *National Association of Radiation Survivors*, ___ U.S. ___, 105 S. Ct. 3180 (1985); *Watt* v. *Energy Action Education Foundation*, 454 U.S. 151 (1981).

REASONS FOR GRANTING THE WRIT

The issues presented for review by this case are of major importance to the enforcement of all federal environmental statutes in the Ninth Circuit and to the national OCS program. The Ninth Circuit's ruling that proof of a "substantive procedural violation" of an environmental statute *per se* justifies entry of an injunction will govern all cases in that circuit decided under numerous federal environmental statutes. As pointed out in the dissent below (A51), this Ninth Circuit rule is directly contrary to *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305 (1982).

The lower court's holding that ANILCA applies to OCS lease sales and requires elaborate hearings and modifications of OCS projects at the leasing stage of the project, even though no subsistence impacts will occur at that stage, imposes a severe burden on the OCS leasing program. The national impact of the lower court's rulings is shown by the fact that lands offshore Alaska comprise approximately 60 percent of the entire United States OCS[5] and are an essential part of the Interior Department's Five-Year OCS leasing schedule.[6]

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[5]*See* Minerals Management Service, Federal Offshore Statistics 28 (Table 6) (Sept. 1984).

[6]Of the 16 sales remaining on the current Five-Year OCS Oil and Gas Leasing Schedule, eight are offshore Alaska. *Id.* at 9. *See generally California v. Watt*, 712 F.2d 584 (D.C. Cir. 1983), upholding the present schedule.

I.

THE NINTH CIRCUIT'S HOLDING THAT A "SUBSTANTIVE PROCEDURAL VIOLATION" OF AN ENVIRONMENTAL STATUTE *PER SE* MANDATES AN INJUNCTION CONFLICTS WITH THIS COURT'S DECISION IN *WEINBERGER* v. *ROMERO-BARCELO*.

The expansiveness of the Ninth Circuit's *per se* injunctive-relief rule is reflected by the *de minimis* nature of the "substantive procedural violation" of ANILCA found by the court below. In the Sale No. 83 case, the district court held that Interior had, in fact, evaluated the impacts on subsistence and other factors recited by Section 810(a) in complying with NEPA, OCSLA, and other statutes. (A61-62). The district court specifically found (A61-62), and the Ninth Circuit did not disagree, that Sale No. 83 would not significantly restrict subsistence uses. The sole ANILCA violation found by the district court and the court of appeals with respect to Sale No. 83 was that Interior did not have that statute's requirements "consciously in mind" at the time it performed analyses under other environmental statutes. (A31-34).

In this setting, the Ninth Circuit's holding that plaintiffs were entitled to an injunction against operations in the Sale No. 83 region makes clear that, in its view, any violation of an environmental statute, no matter how technical or trivial its consequences, requires an injunction. This view is clearly at variance with this Court's decision in *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305 (1982).

In *Weinberger*, this Court reversed a decision by the First Circuit that mandated issuance of an injunction due to the Navy's violation of the Clean

Water Act. The First Circuit had "concluded that the district court erred in undertaking a traditional balancing of the parties' competing interests." *Id.* at 310-11. After tracing the long history of federal equity practice and the requirements for showing irreparable injury and a traditional balancing of equities, this Court emphasized that "a major departure from the long tradition of equity practice should not be lightly implied." *Id.* at 320.

The Ninth Circuit in this case committed the same error as the First Circuit in *Weinberger*. Rejecting the district court's view that plaintiffs' inability to prove irreparable harm militated against issuance of an injunction in this case, the Ninth Circuit postulated that only two instances could arise in which a violation of an environmental statute would not require issuance of an injunction: if issuance of a preliminary injunction would result "in a belated interruption of long term contracts" (A37);[7] or if it would interfere with the protection of the environment (A40).

In stating this *per se* rule, the majority purported to distinguish *Weinberger* because it arose under the Clean Water Act, and "did not involve the tension between the requirements of [ANILCA] and [THE

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[7]The fact that the court's injunction would interrupt petitioners' enjoyment of the right to explore their leases under their long-term leasehold contracts with the federal government, as well as the exploration permits that the federal government had previously issued to them, did not dissuade the Ninth Circuit from reversing the district court. Thus, the "belated interruption of long-term contracts" exception articulated by the court of appeals to its *per se* rule is so narrow as to be virtually non-existant.

OCSLA]." (A42 n.2).[8] As Judge Dimmick pointed out in her dissenting opinion (A50-51), *Weinberger* cannot properly be reduced to these meaningless dimensions.

In *Weinberger*, this Court couched its decision in terms that govern all requests for injunctive relief in the federal courts, not merely those arising under the Clean Water Act:

> An injunction should issue only where the intervention of a court of equity "is essential in order effectually to protect property rights against injuries otherwise irremediable." . . . . The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies . . . .
>
> The grant of jurisdiction to insure compliance with a statute hardly suggests an absolute duty to do so under any and all circumstances, and a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of

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[8]The Court also attempted to distinguish *Weinberger* as inapplicable because it involved an appeal from a final judgment after trial on the merits, rather than a request for preliminary relief. (A42 n.2). This distinction is misplaced for two reasons. First, the Ninth Circuit treated as final its resolution of the ANILCA issues in this case. Second, as the court below recognized (A28), courts of appeals are supposed to give greater deference to district court rulings on preliminary injunctions than to final judgments. Thus, the Ninth Circuit's *per se* rule, if applied to reverse a denial of preliminary relief, will *a fortiori* apply to denials of final relief.

law. . . .

456 U.S. at 312, 313 (citations omitted).[9]

The Ninth Circuit expressly recognized that "the D.C. Circuit Court apparently does not follow the Ninth Circuit rule that injunctive relief is the appropriate remedy for a violation of an environmental statute absent rare or unusual circumstances" (A37) (referring to *Alaska* v. *Andrus*, 580 F.2d 465 (D.C. Cir.), *vacated in part on other grounds as moot*, 439 U.S. 922 (1978)) The fact is, at least four other circuits also have explicitly followed *Weinberger* and have rejected the view that violation of an environmental statute automatically leads to an injunction. *See, e.g.*, *Wisconsin v. Weinberger*, 745 F.2d 412, 424, 427 (7th Cir. 1984); *Massachusetts v. Watt*, 716 F.2d 946, 952 (1st Cir. 1983); *United States* v. *Lambert*, 695 F.2d 536, 539 (11th Cir. 1983); *Sierra Club* v. *Hennessy*, 695 F.2d 643, 648-49 (2d Cir. 1982). To our knowledge, only the Ninth Circuit has sought to trivialize

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[9]That *Weinberger* stated principles applicable to litigation under NEPA and other environmental statutes, such as ANILCA, is revealed by earlier decisions of this Court. For example, in *Kleppe* v. *Sierra Club*, 427 U.S. 390, 407-08 (1976), this Court reversed a court of appeals which had held that the " 'harm' justifying an injunction 'matured' whenever an impact statement [under NEPA] is due and not filed." Noting that the court of appeals had in fact found that there would be "no harm" arising from the mining operations challenged there, this Court concluded that

> [I]n simple equitable terms there were no grounds for the injunction: the District Court's finding of irreparable injury to the intervenors and to the public still stood, and there were—on the Court of Appeals' own terms—no countervailing equities. *Id.*

Weinberger by limiting its application to the Clean Water Act. Review by this Court is therefore essential, not only to require the Ninth Circuit to comply with this Court's *Weinberger* decision, but also to bring that Circuit into alignment with all others that have ruled on the question.[10]

II.

THE LOWER COURT INCORRECTLY APPLIED ANILCA TO THE LEASING OF OCS LANDS OFFSHORE ALASKA.

Section 810(a) applies only to "public lands," which are defined as lands "situated in Alaska," "the title to which is in the United States. . . ." ANILCA § 102(2), (3), 16 U.S.C. §§ 3102(2), (3). The Secretary

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[10]That the Ninth Circuit's disregard of *Weinberger* in *Gambell II* does not represent an isolated ruling is demonstrated by two subsequent decisions of that Court. In *The Steamboaters* v. *FERC*, No. 83-7444 (Dec. 5, 1985, Slip Op. at 2), the court (Sneed, Alarcon, Norris, C. JJ.) applied the "general rule" of "declin[ing] to enjoin action allegedly in violation of NEPA only where an injunction 'might actually jeopardize natural resources.' " Similarly, in *City of Tenakee Springs* v. *Block*, No. 84-3883 (Dec. 20, 1985, Slip Op. at 12), the court (Browning, Goodwin, Skopil, C.JJ.) referred to the presumption of irreparable injury based upon a NEPA violation in reversing the district court's denial of a motion for preliminary injunction. See also *Save Our Ecosystems* v. *Clark*, 747 F.2d 1240, 1250 (9th Cir. 1984), anticipating the *per se* rule articulated in *Gambell II*.

The Ninth Circuit's *per se* rule has recently been followed by the Alaska District Court, which enjoined an OCS lease sale because it was "without discretion" to deny plaintiffs a preliminary injunction after finding a probability of success on their ANILCA claims. *Village of Akutan* v. *Hodel*, No. A85-701 (D. Alaska, January 13, 1986, Slip Op. at 4), *appeal pending*, 9th Cir. No. 86-3512.

must "evaluate the effect of such [disposition] on subsistence uses and needs, the availability of other lands for the purpose sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes." Section 810(a), 16 U.S.C. § 3120(a). If, but only if, such evaluation leads the agency to conclude that the disposition "would significantly restrict subsistence uses," the agency must give public notice of that fact, conduct hearings in or near the affected areas, and make specified findings that such restriction is "necessary," that the proposed activity will involve "the minimal amount of public lands necessary to accomplish" the agency's purpose, and that "reasonable steps will be taken to minimize adverse impacts upon subsistence. . . ." Section 810(a)(1)-(3), 16 U.S.C. § 3120(a)(1)-(3). *See Kunaknana v. Clark*, 742 F.2d 1145, 1150 (9th Cir. 1984).

In *Gambell I*, the Ninth Circuit held that the Department of the Interior must comply with Section 810(a) of ANILCA in offering federal OCS lands which lie three or more miles off Alaska but are allegedly close enough to shore to be used for subsistence. (A14). In *Gambell II*, it extended this holding to OCS lands, like those in the Navarin Basin, that are at least 250 miles off the Alaska mainland. (A27).

Gambell I applied ANILCA only to the extent of requiring a pre-sale evaluation of a project's possible impacts on subsistence. (A21). *Gambell II* holds that the notice, hearings, and findings requirements of Section 810(a)(1)-(3) must be complied with, at the leasing stage of an OCS project, if the ANILCA evaluation forecasts significant subsistence restrictions

when the exploration or development/production stage of projects is approved. (A34-35).[11]

Finally, *Gambell II* retroactively applied these rulings to a lease sale that was conducted a year earlier without litigation challenge, and mandated an injunction against exploration on these previously unchallenged leases. (A44).

Thus, the Ninth Circuit's construction of ANILCA in *Gambell II* creates a major obstacle to the congressional mandate for expeditious exploration and development of OCS resources, *see, e.g.*, 43 U.S.C. § 1332(3)(1); *Watt* v. *Energy Action Educational Foundation*, 454 U.S. at 154 n.2, and is in conflict with this Court's recognition that Congress designed the OCS process to avoid leasing-stage litigation over issues that might never arise, *Secretary of the Interior* v. *California*, 464 U.S. at 341 ("The stated reason for this four part division [of OCS projects] was to forestall premature litigation regarding adverse environmental effects that all agree will flow, if at all, only from the latter stages of OCS exploration and production.").[12]

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[11]See discussion at pp. 21-23, *infra*. In the ANILCA evaluation of OCS Lease Sale No. 57 conducted by the Department in compliance with *Gambell I*, the Department estimated that there was only a 13% chance that commercial quantities of oil and gas would be discovered in the Norton Sound (S.E.R. 91); if such discoveries were made, Interior speculated that there was a 75% chance of a 1000-barrel oil spill during the 20-year production stage (*id.* at 4).

[12]The potential disruption created by the Ninth Circuit's extension of ANILCA to OCS leasing is further illustrated by a recent construction of *Gambell II* as requiring leasing-stage

A. The Ninth Circuit Erroneously Applied Section 810 of ANILCA to the OCS.

Section 810(a) of ANILCA applies only to "public lands." 16 U.S.C. § 3120(a). "Public lands" are defined as "lands situated in Alaska which. . . are Federal lands." 16 U.S.C. § 3102(3). "Federal lands" are defined, in turn, as "lands the title to which is in the United States . . . ." 16 U.S.C. § 3102(2). The OCS lies outside, not "in Alaska." Moreover, it does not constitute "lands the title to which is in the United States." Thus, Section 810 does not apply to the OCS.

The OCS is not located "in Alaska" in the common usage of that term. Any school child asked to identify Alaska on a map would point to its land mass, not the vast oceans that surround it. Moreover, the OCS, as defined in law,[13] lies beyond the three-mile limit which marks the outer bounds of Alaska's waters. *United States* v. *Maine,* 420 U.S. 515, 525 (1975); *Secretary of the Interior* v. *California,* 464 U.S. at 315-16. Thus, in applying ANILCA only to lands "in Alaska" Congress did not intend for it to extend to the OCS.

The legislative history of ANILCA supports this conclusion. Congressman Emery stated that "this legislation has nothing to do with" the OCS. 125 Cong. Rec. 11,170 (1979). Congressman Udall, the primary sponsor of ANILCA in the House, stated that

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compliance with the elaborate procedures of Section 810(a)(1)-(3) whenever there is any "possibility" or "threat" of significant subsistence restrictions at the ultimate development/production stage of an OCS project. *Village of Akutan* v. *Hodel,* at Slip Op. p. 3.

[13]Submerged Lands Act, 43 U.S.C. § 1301; OCSLA, 43 U.S.C. § 1331.

the bill would not affect offshore oil lands, which were instead regulated by "other legislation . . . which we all support, . . . good OCS legislation." 125 Cong. Rec. 11,128 (1979); *see also* 125 Cong. Rec. 9900 (1979) (remarks of Rep. Udall). Senator Stevens of Alaska emphasized the difference between lands in Alaska and lands on the OCS. 124 Cong. Rec. 19571-72 (1978).[14]

Just as it is clear that the OCS lies outside, not in, Alaska, it is also clear that the United States does not claim "title" to it, so that it is not "Federal lands" qualifying as "public land." In the 1953 OCSLA, Congress declared that "the subsoil and seabed of the [OCS] appertain to the United States and are subject to its jurisdiction, control, and power of disposition." 43 U.S.C. § 1332(1). "Appertain" means "to belong either as something appropriate or as a part, possession, right or attribute: PERTAIN. . . ." Webster's Third New International Dictionary. By contrast, "title" means "legal ownership"; having a right of "exclusive possession." *Id.* The OCS, like Wisconsin, "appertains" to the United States; the federal government holds "title" to neither.

That Congress' explicit refusal to assert federal "title" to the OCS in the OCSLA was deliberate is shown by its simultaneous vesting of "title" in the States to "lands beneath navigable waters" lying

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[14]The Ninth Circuit relied on scattered statements referring to the OCS as "in Alaska," as contrasted to the more precise phrase "offshore Alaska." *Gambell I* (A15). The court clearly erred in giving decisive weight to these offhand comments in the face of explicit disclaimers by sponsoring members of Congress that ANILCA would not apply to the OCS.

generally within three miles of the coast. See Submerged Lands Act, 43 U.S.C. § 1311(a):

> It is determined and declared to be in the public interest that (1) title to and ownership of lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters . . . are . . . recognized, confirmed, established, and vested in and assigned to the respective States. . . .[15]

Thus, States were recognized as having "title" to submerged lands within three miles of their coasts; the OCS, by contrast, merely "appertains" to the United States. See *Treasure Salvors, Inc.* v. *Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330, 337-40 (5th Cir. 1978).[16]

In concluding that Title VIII of ANILCA applies to the OCS, the Ninth Circuit found "compelling" the argument (A15) that this statute should have the same geographic scope as the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§ 1601-1628,

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[15]43 U.S.C. § 1301(a)(2) defines "lands beneath navigable waters" as including "all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line of three geographical miles distant from the coast line of each such State. . . ."

[16]The Truman Proclamation, through which the United States first asserted control over the OCS for purposes of mineral exploration, did not purport to assert title to it. 10 Fed. Reg. 12303 (Oct. 2, 1945), 59 Stat. 884. Moreover, the Convention on the Continental Shelf, ratified by the United States on March 24, 1961, 15 U.S.T. 471, TIAS 5578, indicates that sovereigns do not hold "title" to their respective outer continental shelves. It provides, Art. II, 1, only that "[t]he coastal State exercises

which it held extinguished all aboriginal title claims by Alaskan Natives to the OCS. The essential predicates for this argument are that, first, the terms of the two statutes are similar, and, second, that "the extinguishment of aboriginal rights" by ANCSA is sufficiently coincident with the provisions of ANILCA to have "made those measures [in ANILCA] necessary." Both propositions are flawed.

First, although the phrase "in Alaska" occurs in both statutes, the context in ANCSA is materially different from the one in ANILCA. ANCSA explicitly refers to "submerged land underneath all water areas, both inland and offshore." 43 U.S.C. § 1603(b). In ANILCA, Congress explicitly refused to make reference to offshore submerged lands on the OCS.[17]

Second, ANILCA is demonstrably not co-extensive with ANCSA. For example, ANCSA extinguished all Native title claims against "the United States, the State, and all other persons," 43 U.S.C. § 1603(c), whereas ANILCA Section 810 applies only to the disposition of lands to which the federal government

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over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." The distinction between "title" and such exploitation rights is important for a variety of reasons; *e.g.*, the waters overlying the OCS remain international waters, and other nations have important rights in them which limit the coastal state's right of exploiting the resources of the shelf itself. *See* Arts. III, IV, V.

[17]In addition, ANCSA extinguished not only all aboriginal title claims in Alaska, but also "all claims . . . that are *based on* claims of aboriginal . . . title . . . in Alaska" (emphasis added). Since the Natives' OCS claims were based on their alleged occupancy of the adjacent lands onshore in Alaska, this provision is properly construed as extending extinguishment beyond the boundaries of the state. 43 U.S.C. § 1603(c).

holds title. Moreover, ANCSA addressed claims of Alaskan Natives, whereas Title VIII's benefits extend to all "rural residents," Native and non-Native alike. 16 U.S.C. § 3101(c).

Finally, the federal defendants and intervenors in *Gambell I* demonstrated that plaintiffs could not properly claim aboriginal title to the federal OCS, since such claims were contrary to common,[18] constitutional,[19] and international law,[20] and to OCSLA.[21]

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[18]*See United States v. Holt State Bank*, 270 U.S. 49, 59 (1926) (rejecting aboriginal-title claim to the bed of a navigable lake).

[19]In the paramountcy cases, this Court held that "the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil." *United States* v. *California*, 332 U.S. 9, 38-39 (1947). *See also United States* v. *Texas*, 339 U.S. 707, 719 (1950); *United States* v. *Louisiana*, 339 U.S. 699, 705-06 (1950). Any exercise of aboriginal title is inconsistent with the federal "full dominion" over that area. The district court in *Gambell I* rejected plaintiffs' aboriginal-title claims on this ground, and thus found it unnecessary to reach the issue of extinguishment under ANCSA; *see also Inupiat Community of the Arctic Slope* v. *United States*, 548 F. Supp. 182 (D. Alaska 1982), *aff'd on other grounds*, 746 F.2d 570 (decided by the Ninth Circuit as a companion case with *Gambell I*), *cert. denied*, 106 S.Ct. 68 (1985).

[20]*See, e.g.*, Convention on the Continental Shelf, Art. II, 1, done April 29, 1958, 15 U.S.T. 471, 473, T.I.A.S. 5578 ("The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources"); *id.* Art. II, 2 ("no one may undertake these activities, or make a claim to the continental shelf, without the *express* consent of the coastal state") (emphasis added).

[21]*See* 43 U.S.C. § 1332(3); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 480 n.7 (1981) (in the OCSLA, Congress intended "to retain exclusive federal control of the administration of the

In its zeal to expand ANILCA by making it symmetrical with a broad reading of ANCSA, the Ninth Circuit

> assum[ed] rather than decid[ed] that appellants had aboriginal title to hunt and fish in the waters of Norton Sound above the lands involved in the lease-sale. Since we conclude any such rights were extinguished by [ANCSA], we also do not decide whether they would be extinguished by the [OCSLA] as well." *Gambell I* (A3 n.1).

Thus, in *Gambell I* the Ninth Circuit begged the question that is essential to its holding; it assumed without deciding that ANCSA was necessary to extinguish the Natives' aboriginal title claims to OCS lands and then adopted an expansive reading of ANILCA based on that assumption.[22]

B. The Lower Court's Decision Disregards the Distinct Stages of the OCS Leasing Process and Thus Conflicts with This Court's Decision in *Secretary of the Interior v. California*.

Even if ANILCA applies to some part of the OCS offshore Alaska, the lower court misconstrued the requirements of that statute in the context of the OCS

Shelf because it underlay the high seas and the assertion of sovereignty there implicated the foreign policies of the Nation").

[22]In *Gambell II*, the Ninth Circuit begged a related question: *Gambell I* involved lands in the Norton Sound which were alleged by plaintiffs to be actually used for subsistence. Accordingly, plaintiffs there asserted aboriginal title to these submerged lands by virtue of their historic use of them. *Gambell II* involves not only the Norton Sound tracts leased in Sale No. 57, but also those leased in Sale No. 83, whose lands lie in the remote Navarin Basin, which plaintiffs neither used for subsistence nor

leasing program. In addressing the adequacy of the ANILCA evaluation for Sale No. 57, which the Department prepared in an attempt to comply with *Gambell I*, the Ninth Circuit read ANILCA as requiring, at the leasing stage, compliance with the notice, hearing, and findings procedures of Section 810(a)(1)-(3), if subsistence could be significantly restricted at the much later development/production stage. (A34-35).

The holding that all possible impacts on subsistence at any stage of OCS operations must be the subject of the procedures referred to in Section 810(a)(1)-(3), prior to a lease sale, is inconsistent with *Secretary of the Interior* v. *California*, 464 U.S. 312. There, this Court reversed the Ninth Circuit's similar holding that Interior was required to comply with Section 307(c)(1) of the Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1456(c)(1), prior to an OCS lease sale, if coastal-zone impacts might occur at the later exploration or development/production stage. In doing so, the Court relied heavily on the existence of "four distinct statutory stages to developing an offshore oil well: (1) formulation of a five year leasing plan by the Department of the Interior; (2) lease sales; (3) exploration by the lessees; and (4) development and production." 464 U.S. at 337. This staged approach is one that "Congress has codified with great

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claimed by aboriginal title. Petitioners argued, therefore, that, even assuming that ANILCA is co-extensive with ANCSA, it should not extend to the Navarin Basin, since ANCSA did not extinguish title to such lands. The Ninth Circuit simply ignored that argument and adopted the most expansive possible construction of the term "in Alaska" as used in ANILCA by applying that statute to all federal OCS lands which happen to be nearer Alaska than to any other state.

care." *Id.* at 336. "Each stage involves separate regulatory review that may, but need not, conclude in the transfer to lease purchasers of rights to conduct additional activities on the OCS." *Id.* at 337.

When that rationale is applied here, it follows that no hearings or findings under ANILCA should be required unless the particular "disposition" of lands at issue threatens subsistence restrictions. Leasing itself causes no such restrictions. Development/production-stage impacts can be ascertained and mitigated pursuant to ANILCA procedures if and when exploration locates reserves and plans are formulated to produce oil or gas.[23]

C. The Ninth Circuit's Construction of ANILCA Should Not Apply Retroactively.

The Ninth Circuit's retroactive application of its construction of ANILCA raises a substantial question that merits review by this Court. *See Gambell II* (A45). In *Chevron Oil Co. v. Huson,* 404 U.S. 97 (1971), this Court declined to apply retroactively a new construction of OCSLA and set forth a three-part test to explain its action. That test shows that ANILCA should not be applied retroactively to lease sales conducted prior to *Gambell I.*

To be denied retroactive effect, the decision "must establish a new principle of law . . . by deciding an

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[23]The majority below distinguished *Secretary of the Interior* v. *California* on the ground that it related to the CZMA, not to ANILCA (A35-35). However, this Court found that the four stages of the OCS process were created by OCSLA, not by CZMA, and held that the creation of those distinct stages must be considered in interpreting and applying the CZMA.

issue of first impression whose resolution was not clearly foreshadowed. . . ." 404 U.S. at 106. The Department of the Interior had consistently interpreted ANILCA as not applying to OCS activities. *See* 43 C.F.R. § 1601.0-5(i). No one had argued otherwise until the complaint in *Gambell I*, and both the district court and the Ninth Circuit's motions panel in that case had rejected the theory underlying that complaint. Thus, the Ninth Circuit's *Gambell I* declaration in November 1984 that the OCS lies "in Alaska" was neither clearly nor even opaquely foreshadowed.

Second, the court must determine whether retroactive operation of the new decision "will further or retard [the statute's] operation." 404 U.S. at 107. The district court found, and the court of appeals did not disagree, that subsistence could be fully protected by applying ANILCA to any post-leasing-stage activities which threatened subsistence, rather than to OCS leases already issued. (A62-63). Thus, the retroactive application of *Gambell I* declared in *Gambell II* is not necessary to further ANILCA's operation.

Third and finally, the court must weigh "the inequity caused by retroactive application." 404 U.S. at 107. Here, grave inequities could be done by applying ANILCA to prior OCS sales. Seven OCS lease sales were held offshore Alaska between ANILCA's enactment and the Ninth Circuit's decision in *Gambell I*, with petitioners and numerous other companies paying more than $4,000,000,000 to acquire leases.[24] Hundreds of millions more have been spent for ex-

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[24]*See* Federal Offshore Statistics, *supra*, at 12-15.

ploration of these OCS tracts.[25] Retroactive application of ANILCA to past sales to void the leases, as plaintiffs here have requested, would impose staggering financial losses on petitioners and others who could not reasonably foresee ANILCA's application to all OCS lands off Alaska. Plaintiffs threaten comparable damage to the public interest by seeking to bring Alaska OCS activities to a halt pending compliance with ANILCA.[26]

Thus, even if ANILCA applies to the OCS offshore Alaska, the statute should not apply to leases issued prior to *Gambell I*.

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[25]As noted above, p. 5, $60 million had been committed for 1985 exploration in the Navarin Basin alone prior to the commencement of operations.

[26]Following *Huson*, this Court has denied retroactive effect to new constructions of statutes in comparable circumstances, where there would have been serious disruption of financial arrangements made in reliance upon a prior construction of the statute. *See City of Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702, 719-20 (1978); *see also Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans* v. *Norris*, 463 U.S. 1073, 1075 (1983); *id.* at 1105-07 (opinion of the Court per Powell, J.); *id.* at 1109-11 (O'Connor, J., concurring).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari and entertain full briefing and argument.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT.

Nos. 83-3735X, 83-3781.

The People Of the Village of Gambell, an Alaskan Native IRA Association, and the People of the Village of Stebbins, an Alaskan Native IRA Association,
Plaintiffs-Appellants,

v.

William Clark*; Secretary of the Interior and the United States Department of Interior,
Defendants-Appellees

and

Arco Alaska, Inc., *et al.*,
Defendants-Appellees.

Argued and Submitted Oct. 7, 1983.
Decided Nov. 2, 1984.

Alaskan natives brought action against the Secretary of Interior to enjoin sale of oil and gas exploration leases for shelf lands in the Norton Sound basin off the western shore of Alaska. The United States District Court for the District of Alaska, James A. von der Heydt, J., granted the Secretary's motion for summary judgment, and plaintiffs appealed. The Court of Appeals, Browning, Chief Judge, held that: (1) if plaintiffs had an exclusive aboriginal right to hunt and fish in off-shore areas adjacent to Alaska, that right was extinguished by the Alaskan Native Claims Settlement Act, but (2) the Alaska National Interest Land Conservation Act applied to outer continental shelf lands and waters.

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*William Clark is substituted for James G. Watt as Secretary of the Interior pursuant to Fed.R.App.P. 43(c).

Affirmed in part, reversed in part, and remanded.

Donald Cooper, Anchorage, Alaska, for plaintiffs-appellants.

David C. Shilton, Dept. of Justice, Brice M. Clagett, Covington & Burling, Washington, D.C., for defendants-appellees.

Appeal from the United States District Court for the District of Alaska.

Before BROWNING, Chief Judge, HUG, Circuit Judge, and REED**, District Judge.

BROWNING, Chief Judge:

The appellee Secretary of Interior offered to sell leases for about 2.4 million acres of land in the Norton Sound Basin off the western shore of Alaska for oil and gas exploration under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331-1356. Appellee oil companies submitted bids for these leases. Appellants, the People of the Village of Gambell and the People of the Village of Stebbins (Alaska Native Indian Reorganization Act Associations composed of residents of two towns on Norton Sound) brought this action to enjoin the sale. The district court denied appellants' motion for preliminary injunction and granted the Secretary's motion for summary judgment. This appeal followed.

Appellants argue that oil and gas development without their consent is barred because it will adversely affect their aboriginal right to subsistence hunting and fishing. Alternatively, they content the lease sale failed to satisfy the procedural requirements of section 810 of the Alaska National Interest Lands Conservation Act (Conservation Act), 16 U.S.C. § 3120, providing special protections for subsistence uses in Alaska.

The district court held that neither appellants' aboriginal hunting and fishing right nor section 810 of the Conser-

**Honorable Edward C. Reed, Jr., United States District Judge, District of Nevada, sitting by designation.

vation Act extend to waters over the outer continental shelf outside the territorial boundaries of the State of Alaska.

We hold that if appellants had an exclusive aboriginal right to hunt and fish in offshore areas adjacent to Alaska, that right was extinguished by the Alaskan Native Claims Settlement Act (Claims Settlement Act), 43 U.S.C. §§ 1601-1628.[1] We further hold, however, that section 810 of the Conservation Act does apply to outer continental shelf waters in Norton Sound, and remand to the district court for determination of the proper remedy.

I.

Appellants argue that oil and gas exploration and development in Norton Sound conflicts with their asserted aboriginal right to hunt and fish in these waters and concomitant right to the minerals of the outer continental shelf underlying the Sound.

Aboriginal title or right is a right of exclusive use and occupancy held by Natives in lands and waters used by them and their ancestors prior to the assertion of sovereignty over such areas by the United States. These rights are superior to those of third parties, including the states, but are subject to the paramount powers of Congress. *See Oneida Indian Nation v. County of Oneida,* 4414 U.S. 661, 667-69, 94 S.Ct. 772, 777-78, 39 L.Ed.2d 73 (1974); *United States v. Santa Fe Pacific R.R.*, 314 U.S. 339, 345, 62 S.Ct. 248, 251, 86 L.Ed 260 (1941). Aboriginal rights based on occupation and use are entitled to the protection of federal law even when they are not formally recognized as ownership by treaty or statute, *Santa Fe,* 314 U.S. at 347, 62 S.Ct. at 252, but such unrecognized aboriginal

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[1]We assume rather than deciding that appellants had an aboriginal right to hunt and fish in the waters of Norton Sound above the lands involved in the lease-sale. Since we conclude any such rights were extinguished by the Claims Settlement Act, we also do not decide whether they would be extinguished by the Outer Continental Shelf Lands Act as well.

rights can be extinguished by Congress without compensation. *See Tee-Hit-Ton Indians v. United States,* 348 U.S. 272, 279-85, 288-89, 75 S.Ct. 313, 317-20, 321-22, 99 L.Ed. 314 (1955); *United States v. Dann,* 706 F.2d 919, 922 n. 1 (9th Cir. 1983), *cert. granted,* ___ U.S. ___, 104 S.Ct. 2693, 81 L.Ed.2d 362 (1984); *Wahkiakum Band v. Bateman,* 655 F.2d 176, 180 (9th Cir. 1981); *United States v. Atlantic Richfield Co.*, 612 F.2d 1132, 1134 (9th Cir.1980). Congress's intention to extinguish must be clear; it will not be lightly implied. *See United States v. Santa Fe Pacific R.R. Co.,* 314 U.S. 339, 354, 62 S.Ct. 248, 255, 86 L.Ed. 260 (1941); *United States v. Dann,* 706 F.2d at 928-29; *United States v. Gemmill,* 535 F.2d 1145, 1147 (9th Cir.1976)

Appellees argue the Claims Settlement Act extinguished whatever aboriginal rights the Natives may have held in Norton Sound. The Claims Settlement Act arose out of a series of events beginning with passage of the Alaska Statehood Act in 1958. When Alaska became a state, nearly all its territory was federal land. The Statehood Act granted the new state the right to select over 100 million acres for state ownership. However, the state agreed by section 4 of the act to "disclaim all right and title . . . to any lands or other property (including fishing rights) [of Alaska Natives] . . . ." Pub.L. 85-508, 72 Stat. 339, 339 (1958). The state selected large areas of federal land and made application for patents for the land. The Natives claimed aboriginal title to much of the same territory. The discovery of oil on the North Slope in the 1960's exacerbated this conflict. These conflicting claims hindered both development and protection of Native and national interests in Alaska. In 1966 Secretary of Interior Stewart Udall "froze" all public land transactions in Alaska pending resolution of the conflicting claims. In 1971 Congress passed the Claims Settlement Act in an effort to accommodate in a rational manner the interests of the state, Native groups, conservationists, and potential developers, including the oil companies. *See generally,* H.R.Rep. No. 1045,

95th Cong., 2d Sess., pt. I at 188-89 (1978); S.Rep. No. 405, 92d Cong., 1st Sess., pt. I at 71-78 (1971).

The heart of the Claims Settlement Act was the extinguishment of Native claims based on aboriginal right in return for a grant to the Natives of $962,500,000 and 40,000,000 acres of land. *United States v. Atlantic Richfield,* 612 F.2d 1132, 1134 (9th Cir.1980). Unquestionably it was the purpose of the Claims Settlement Act to extinguish the aboriginal claims of Alaska Natives.[2] The question is whether the extinguishment provision applies to lands on the outer continental shelf adjacent to the Alaskan land mass and to waters over such lands.

Our inquiry begins with the statutory language. The critical language is found in Section 4(b) of the Act, 43 U.S.C. § 1603(b):

> All aboriginal titles, if any, and claims of aboriginal title *in Alaska* based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished. (emphasis added).

The statute also states: "there is an immediate need for a fair and just settlement of all claims by Natives . . . based on aboriginal land claims," and "the settlement should be accomplished rapidly, with certainty, [and] . . . without litigation . . . ." 43 U.S.C. § 1601(a), (b).

The argument that aboriginal title in outer continental shelf lands and waters is not extinguished rests entirely upon use in section 4(b) of the phrase "in Alaska" to identify the location of the titles and claims of title to be extinguished.

We believe Congress used the phrase "in Alaska" in this context to mean the geographic region, including the

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[2] "Native" is defined in the Act as "a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof." 43 U.S.C. § 1602(b).

contiguous continental shelf and the waters above it, and not merely the area within the strict legal boundaries of the State of Alaska. This is not an uncommon usage. Indeed, the Norton Sound, at issue here, is described in *Webster's New Geographical Dictionary* (1972 ed.) as a "large inlet of NE Bering Sea, *in W Alaska* . . ." (emphasis added). As indicated in Part II of this opinion, nine years later, when Congress adopted the Alaska National Interest Lands Conservation Act, 16 U.S.C. §§ 3101-3233 (Conservation Act), to complete the land allocation process initiated by the Statehood and Claims Settlement Acts, Congress used the words "in Alaska" to refer to areas of the outer continental shelf. Section 1001 of the Conservation Act, 16 U.S.C. § 3141, refers to "all Federal lands (other than submerged lands on the Outer Continental Shelf) in Alaska . . . ." During debates on the Conservation Act, the phrase "in Alaska" was used on numerous occasions to include the outer continental shelf. *See e.g.*, 125 Cong.Rec. 9900, 11,125 (1979) (statements of Rep. Udall); *id.* at 9907 (statement of Rep. Young).

The possibility of two meanings of the phrase "in Alaska" renders the provision ambiguous, justifying reference to the legislative history. That history makes it clear that Congress intended to extinguish aboriginal fishing and hunting rights in outer continental shelf waters contiguous to the State of Alaska.

Congress repeatedly enjoined those who were to implement the statute to interpret the extinguishment section broadly to accomplish a complete and final settlement of aboriginal claims and avoid further litigation of such claims.[3] Claims of aboriginal title to submerged lands, both

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[3]Relevant statements from the legislative history are quoted in *United States v. Atlantic Richfield Co.*, 612 F.2d 1132, 1136 (9th Cir.1980):

The House report stated,

> "Section 4 extinguishes all aboriginal titles in Alaska, and all claims based thereon,

and

> The section extinguishing aboriginal titles and claims based on

inland and offshore, were expressly included in the extinguishment provision, as were "any aboriginal hunting or fishing rights." The needs of the Natives for subsistence hunting and fishing were considered in determining the amount of land granted the Natives, *see, e.g.,* H.R.Rep. No. 523, 92nd Cong., 1st Sess. 5, *reprinted in* 1971 U.S. Code Cong. & Ad.News 2192, 2195; the land was granted, in part, "in lieu of subsistence hunting and fishing rights," 117 Cong.Rec. 36864 (1971) (Rep. McClure).[4]

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aboriginal title is intended to be applied broadly, and to bar any further litigation based on such claims of title."

H.R.Rep. No. 523, 92d Cong., 1st Sess. 6, 8 *reprinted in* [1971] U.S.Code Cong. & Ad.News 2196, 2198. The Senate report stated that the objective of the legislation was to avoid

"a myriad of lawsuits which cannot provide justice to any of the parties involved but which may be expected to increase the existing antagonisms between Native people and other Alaskans."

S.Rep. No. 405, 92d Cong., 1st Sess. 73 (1971).

The Conference Committee report[3] stated,

"It is the clear and direct intent of the conference committee to extinguish *all* aboriginal claims and *all* aboriginal land titles, if any, of the Native people of Alaska and the language of settlement is to be broadly construed to eliminate such claims and titles as any basis for any form of direct or indirect challenge to land in Alaska."

Conf.Rep. No. 40, *reprinted in* [1971] U.S.Code Cong. & Ad.News 2253 (emphasis in original).

The statements of former Justice Arthur Goldberg, attorney for the Alaska Federation of Natives, before Congress in 1969 also support the district court's conclusion. Goldberg, under questioning by Senator Stevens of Alaska, said, "The position that the Natives have taken is they they are prepared for an extinguishment of anything that is based upon aboriginal title." *Alaska Native Land Claims: Hearings on S. 1830 Before the Senate Comm. on Interior and Insular Affairs,* 91st Cong., 1st Sess. 300-10 (1969).

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[3]The House and Senate Conference Reports are identical. S.Conf.Rep. No. 481, 92d Cong., 1st Sess. (1971); H.R.Conf.Rep. No. 746, 92d Cong., 1st Sess. (1971) [Hereinafter cited as Conf.Rep.]

[4]Rep. McClure, a member of the Committee on Interior and Insular Affairs, stated:

. . . The settlement of this acreage of land is in lieu of other rights,

Appellants' claim of aboriginal title rests upon immemorial use for hunting and fishing extending far to sea. They assert:

> Factually, no aboriginal group has ever used water and ice as intensely as have the Eskimos. For about half the year, water up to 65 miles from the Arctic coast is frozen solid. The resulting ice areas resemble the tundra, and during this period the Eskimos treat the ice as a mere extension of the land. They set up camps on the ice. They build roads on it. And, most importantly, they hunt and fish on it. R. Nelson, *Hunters of the Northern Ice* (1969). . . . Eskimos have relied on the sea to provide them with most of their necessities. They have relied on the oceans to provide them with food, clothing, fuel, and the basic material for making hunting equipment such as kayaks and harpoons. *Id.;* N. Chance,*The Eskimo of North Alaska* 9 (1966).
>
> Because ice areas are not physically different from land during long periods of the year, and because Eskimos have generally relied on the oceans for most of their food, fuel, and clothing, they have not traditionally recognized sharp distinctions between land and water. Simply stated, the sea is so central to the life of an Eskimo that s/he recognizes no distinctions

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and the bill in specific terms removes hunting and fishing rights. The subsistence lands that may be selected, after the village lands are selected and after the statehood lands are selected, are in lieu of subsistence hunting and fishing rights, and the only hunting and fishing rights they will have are in connection with whatever lands are selected by them under the provisions of the bill.

* * * * * *

. . . The rights for hunting and fishing will be not rights, but whatever is granted to them as a matter of charity or a matter of generosity on the part of the State or the Federal Government. I think we should know that is one of the reasons why the acreage that is granted is as large as it is.

Appellants are two of the villages qualified by section 1610(b) of the Act to receive land benefits under section 1613(a) and (b).

> between the two. . . . K. Josephson, *Alaska and the Law of the Sea: Use of the Sea by Alaskan Natives—A Historical Perspective,* 91 (1974).

Appellants' Opening Brief 27-8. Appellees do not dispute this assertion.

The Final Environmental Impact Statement (FEIS) for the Norton Sound lease sale describes the subsistence way of life as a "continuation of traditional patterns continuous for several centuries." United States Department of Interior, Final Environmental Impact Statement, OCS Proposed Oil & Gas Lease Sale Norton Sound 47 (1982). *See also id.* at xii (subsistence activities "passed on through countless generations."). The Natives' dependence on hunting, whaling, and fishing extending 20-30 miles off shore is described in detail for each of the affected villages. *Id.* at 47-53 & Graphics 2A, 2B, 2C.

Congress could not have been unaware of such widely known facts of Native Alaskan life and appellants do not argue to the contrary. Mr. Eben Hopson, a witness from Point Barrow, Alaska, reminded the senate Interior and Insular Affairs Committee: "As far as hunting on the sea is concerned that is continually being used on a year around basis by the Eskimo people, and the same holds true wherever you find an Eskimo village along the coast." *Alaska Native Land Claims: Hearings on S.1830 Before Senate Comm. on Interior and Insular Affairs,* 91st Cong., 1st Sess., pt. II at 335 (1969) [hereinafter *Senate Hearings 1969*]. *See also Alaska Native Land Claims: Hearings on H.R. 13142, H.R. 10193 and H.R. 14212 Before the Subcomm. on Indian Affairs of the Comm. on Interior and Insular Affairs,* 91st Cong., 1st Sess., pt. II at 401-02 (1969) [hereinafter *House Hearings 1969*]; *Alaska Native Land Claims: Hearings on S.35, S. 835 and S. 1571 Before the Senate Comm. on Interior and Insular Affairs,* 92d Cong., 1st Sess., pt. I at 168, 345 (1971) [hereinafter *Senate Hearings 1971*].

Aboriginal fishing and hunting rights are precisely the kind of rights Congress wished to extinguish. Nothing in the legislative history suggests that Congress intended to

extinguish such rights in ocean waters within three miles of land but preserve them in the waters beyond. On the contrary, the only directly pertinent legislative material strongly suggests Congress intended to extinguish aboriginal fishing rights in outer continental shelf waters as well.

Early versions of the Act contained no reference to either offshore lands or fishing and hunting rights. *See* S. 2906, 90th Cong.2d Sess. § 501 (1968) (extinguishing "all claims against the United States based upon aboriginal right, title, use, or occupancy of lands in Alaska . . . ."); S. 1830, 91st Cong., 1st Sess. § 3(a) (1969) (similar language). During Senate hearings in 1969 John Pickering, representative of the Western Oil and Gas Association, pointed out that some of the Native claims "purport to cover waters in addition to land areas" and "to effectuate a complete settlement, the claims should be extinguished as to water, as well as to land, areas." Mr. Pickering suggested this was true "for submerged areas beneath navigable waters in particular," and identified these as including "submerged areas beneath navigable waters [title over which was vested] in the State of Alaska under the grant made to it by the Submerged Lands Act (67 Stat. 29) as made applicable by the Statehood Act (72 Stat. 343), *or in the United States under the Outer Continental Shelf Lands Act* (67 Stat. 462)." *See Senate Hearings 1969, supra,* pt. I at 140, 144, 149 (emphasis added). "In view of this," Mr. Pickering stated, "it would be unfortunate if the legislation overlooked settling the Native claims to waters and thereby left open the possibility that such claims might be asserted to water areas in the future." *Id.* at 144. To include such areas, Mr. Pickering suggested the extinguishment provision be amended to apply to claims based on use or occupancy not only of lands but also of "waters, and submerged areas in Alaska." *See id.* at 149. The State of Alaska recommended the same language. *See id.*, pt. II at 241. The present language of Section 4 ("including submerged lands underneath all water areas both inland and offshore") was inserted in Senate bills following this hearing.

These events strongly suggest that the reference to "submerged lands" was intended to include lands on the outer continental shelf contiguous to Alaska, and that the general reference to Alaska (as distinguished from the State of Alaska) was not regarded as confining the reach of the extinguishment provision to the three-mile limit.

The express reference in Section 4(b) to "aboriginal hunting or fishing rights" probably also had its genesis in the hearings before the 91st Congress. Arthur J. Goldberg, former Justice of the Supreme Court, appeared before the Senate Committee on behalf of the Alaska Federation of Natives, principal representative of the Natives before Congress. Senator Stevens of Alaska asked Mr. Goldberg whether the Natives agreed that aboriginal fishing and hunting rights should be extinguished. After a rather confusing exchange Senator Stevens said:

> [W]e are talking about a bill to settle the property claims of the Alaska Native people, not just the land claims, a bill to settle the property rights, including land, and I hope that this bill will be viewed in that manner because I would not want to have to come back here a few years from now and try to get a bill to settle the nonland property claims.

Senate Hearings 1969, supra, pt. II at 299-301.

Mr. Goldberg replied:

> The position that the Natives have taken is that they are prepared for an extinguishment of anything that is based upon aboriginal title.

Id. at 301. The Alaska Federation of Natives further clarified Mr. Goldberg's response in a supplemental statement which agreed that the settlement should extend to all claims "founded upon aboriginal title or use and occupancy of lands, including claims relative to fishing rights. . . ." *Id.*

During these same hearings, the National Wildlife Federation suggested the bill be strengthened by adding "in-

cluding any aboriginal hunting or fishing rights that may exist" to the extinguishment provision. *Id.* at 526. This phrase was added without change to the Senate bill and eventually included in the version of the act adopted by Congress.

These witnesses presented similar testimony before the House Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs. The representatives of the Alaska Federation of Natives (AFN) reiterated their view that the act should be a "full and final extinguishment of any and all claims against the United States based upon aboriginal right . . . ." *See House Hearings 1969,* Pt. I, *supra,* at 52. *See also id.* at 265-68. The Governor of the State of Alaska and the representatives of the Western Oil and Gas Association repeated their urgings that the extinguishment section address claims to waters and submerged areas. *See id.* at 138, 154, 310, 312-13, 318. And the National Wildlife Federation recommended to the House Committee addition of the identical phrase to cover aboriginal hunting and fishing rights that it suggested to the Senate Committee. *Id.* at 292.

No legislation passed the 91st Congress, but bills introduced in the 92d Congress reflected this testimony. At least one Senate bill specifically extinguished claims to offshore areas and hunting and fishing rights with language essentially identical to the present section 4(b). *See* S. 35, 92d Cong., 1st Sess. § 4(a) (1971). Similar language in a House bill referred to "alleged aboriginal hunting and fishing rights that may exist." *See* H.R. 3100, 92d Cong., 1st Sess. § 3(b) (1971).

Only brief hearings were conducted by the House and Senate committees on these and other bills in 1971. Representatives of the Western Oil and Gas Association urged the Senate and House to approve bills with extinguishment sections referring to water, offshore areas, and hunting and fishing rights and criticized bills that failed to include specific language extinguishing such claims. *See Senate Hearings 1971 supra,* pt. II at 578, 581, 583; *Alaska Native*

Land Claims: Hearings on H.R. 3100, H.R. 7039, and H.R. 7432 Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 92d Cong., 1st Sess. 353, 354, 356-57 (1971) [hereinafter *House Hearings 1971*]. The AFN explained before the Senate Committee that its position "on the major provisions of the settlement, as well as most of the details, remains virtually the same as it was in our prior appearances before this committee." *Senate Hearings 1971, supra*, pt. I at 306. The National Wildlife Federation stated again its belief that the settlement should extend to "hunting, fishing, and trapping rights." *Id.* at 386. *See also House Hearings 1971, supra*, at 342.

The Senate passed a bill containing an extinguishment section referring to offshore submerged lands and to hunting and fishing rights. Submerged offshore areas were not specifically extinguished in the House-passed bill, but aboriginal hunting and fishing rights were. The conference committee adopted the broader and more explicit language of the Senate bill, stating the language was "in substance, the same as the language of the Senate amendment." H.Conf.Rep. No. 746, 92d Cong., 1st Sess., 40, *reprinted in* 1971 U.S.Code Cong. & Ad. News, 2247, 2253.

This summary of the history of section 4(b) demonstrates that Congress chose to adopt broad language to extinguish all claims made by Alaska Natives based upon aboriginal right, specifically including claims to hunting and fishing rights in offshore waters above the outer continental shelf.

Based upon the language of section 4(b) of the Claims Settlement Act, taken as a whole, the mandate from Congress to construe the provision broadly to extinguish all aboriginal claims, and the legislative history indicating a specific purpose to extinguish aboriginal hunting and fishing rights, including those in coastal waters, and specifically in outer-continental-shelf waters, we conclude that appellants' claims to an aboriginal right to hunt and fish in Norton Sound were extinguished.

II.

We turn to appellants' contention that the lease sale failed to satisfy the procedural requirements of section 810 of the Alaska National Interest Lands Conservation Act (Conservation Act), 16 U.S.C. § 3120, a claim rejected by the district court on the ground that this statutory provision does not apply to the outer continental shelf.

Title VIII of the Conservation Act, of which section 810 is a part, seeks to preserve the opportunity of rural residents of Alaska to take fish and wildlife for their subsistence. As one means of furthering this purpose, section 810 provides that in determining whether to lease or otherwise permit the disposition of public lands the head of the federal agency having primary jurisdiction of such lands shall evaluate the effect of the proposed action on subsistence uses. No action is to be taken which would significantly restrict subsistence uses unless the head of the agency first satisfies certain procedural conditions, including notice and hearing, and determines that the proposed restriction of subsistence uses is necessary, that the minimal amount of "public lands" are involved, and that reasonable steps have been taken to minimize the adverse impact on subsistence uses.

Section 810 applies to "public lands." The term "land" is defined as "land, waters, and interests therein." Section 102 (1), 16 U.S.C. § 3102(1). The term "public lands" is defined as "land situated *in Alaska.*" Section 102(3), 16 U.S.C. § 3102(3) (emphasis added). As in the construction of the Claims Settlement Act,the question in construing the Conservation Act is whether the limitation "in Alaska" in this definition of "public lands" excludes the outer continental shelf and its covering waters. Our conclusion is the same under both statutes: outer continental shelf lands and water contiguous to the State of Alaska are included.

As we have said, a geographic term such as "in Alaska" may be used in either a general or technical sense, and reference to the legislative history to resolve the ambiguity

is appropriate. *See Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89, 39 S.Ct. 40, 42, 63 L.Ed. 138 (1918).

During the House debates the term "in Alaska" was used in its general sense. Representative Morris K. Udall, Chairman of the House Committee on Interior and Insular Affairs, and manager of the bill on the floor, referred to outer continental shelf lands as "in Alaska." 125 Cong.Rec. 9900, 11,128 (1979). So too did Representative Don Young of Alaska, a member of both the Interior Committee and the Subcommittee on General Oversight and Alaska Lands. *See id.* at 9907. Other congressmen referred to "Alaska's" oil resources in terms that necessarily included oil reserves beneath the outer continental shelf. *See id.* at 11,174 (Rep. Huckaby); *id.* at 9893 (Rep. Vento).

In addition to this support for a nontechnical usage of the phrase "in Alaska" to include the outer continental shelf lands and waters, the record of legislative consideration of the Conservation Act contains convincing evidence that Congress intended to include these areas within the reach of section 810.

Appellants make a compelling argument that the provisions of Title VIII of the Conservation Act protecting subsistence uses were intended to have the same territorial scope as provisions of the earlier Claims Settlement Act extinguishing Native hunting and fishing rights. The two statutory provisions are clearly related. When Congress adopted the Claims Settlement Act it was aware that extinguishing Native rights might threaten subsistence hunting and fishing by Alaska Natives. The Senate version of the Claims Act included provisions directing the Secretary to protect subsistence uses on public lands. The Conference Committee eliminated this provision, but the Committee made it clear that it did so only because it concluded subsistence resources should be protected by the Secretary of Interior through the exercise of existing administrative authority. The Committee wrote: "The Conference Committee expects both the Secretary and the State to take

any action necessary to protect the subsistence needs of the Natives." *See* H.Conf.Rep. No. 746, 92d Cong., 1st Sess. 37, *reprinted in* 1971 U.S. Code Cong. & Ad.News 2247, 2250. Title VIII of the Conservation Act was enacted because the Secretary and the state failed to heed Congress's admonition. *See* S.Rep. No. 413, 96th Cong., 1st Sess. 230-31, *reprinted in* 1980 U.S.Code Cong. & Ad.News, 5070, 5174-75; S.Rep. No. 1300, 95th Cong., 2d Sess. 195-96 (1978); H.R. Rep.No. 1045, 95th Cong., 2d Sess., pt. I at 183-84 (1978); 126 Cong.Rec. 29278 (1980) (Cong. Udall); 125 Cong.Rec. 9904 (1979) (Cong. Udall). It is a reasonable assumption that Congress intended the preference and procedural protections for subsistence uses mandated by Title VIII of the Conservation Act to be coextensive with the extinguishment of aboriginal rights that made those measures necessary.

Congress's intention to protect subsistence uses by rural residents of Alaska is repeatedly and strongly stated in the statute itself. It was a stated general purpose of the Conservation Act "to provide the opportunity for rural residents engaged in a subsistence way of life to continue do to so." Section 101(c), 16 U.S.C. § 3101(c). Congress found that continuation of the opportunity of rural Alaskans to make subsistence use of fish and wildlife "is essential to [their] existence." Section 801(1), 16 U.S.C. § 3111(1). Congress further found that "to fulfill the policies and purposes of the [Claims Settlement Act] and as a matter of equity, it is necessary . . . to protect and provide the opportunity for continued subsistence uses on the public lands. . . ." Section 801(4), 16 U.S.C. § 3111(4). It is Congress's stated policy that "utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands. . . ." Section 802(1), 16 U.S.C. § 3112(1). The stated purpose of Title VIII in particular "is to provide the opportunity for rural residents engaged in a subsistence way of life to do so." *Id.*

Congressional reports and debates echo these views.[5] It is clear Congress's concern included all rural Alaskans,[6] and, as we have seen, reliance by coastal villagers upon hunting and fishing in waters and on the ice over the outer continental shelf was well known.[7] In strikingly similar circumstances, the Supreme Court has twice given an expansive and non-technical interpretation to geographical terms to achieve Congress's apparent purpose to protect native fisheries. *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 110-16, 69 S.Ct. 968, 982-86, 93 L.Ed. 1231 (1949); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89, 39 S.Ct 40, 42, 63 L.Ed. 138 (1918).

There are other indications of a Congressional intent that section 810 apply to outer continental shelf waters. For example, as originally proposed the subsistence provisions applied only to lands in conservation units established by what are now Titles II through VII of the Conservation Act. *See* H.R. 39, § 701(a), (b), 95th Cong., 1st Sess. (1977). The boundaries of these units were fixed by maps to be approved with the legislation, *see id.* § 1(c), and generally would not have included outer continental

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[5]*See, e.g.*, S.Rep. No. 413, 96th Cong., 1st Sess. 230-33, 267-68, *reprinted in* 1980 U.S. CodeCong. & Ad.News 5070, 5174-77, 5211-12; S.Rep. No. 1300, 95th Cong., 2d Sess. 195-96 (1978); H.R.Rep. No. 1045, Pt. I., 95th Cong., 2d Sess. 181-84, 187 (1978); 126 Cong.Rec. 29,278 (1980); 125 Cong.Rec. 9904-05 (1979).

[6]*See* S.Rep. No. 413, 96th Cong., 1st Sess. 268-69, *reprinted in* 1980 U.S.Code Cong. & Ad.News 5070, 5212-13; S.Rep. No. 1300, 95th Cong., 2d Sess. 220 (1978); 126 Cong.Rec. 29278-79 (Cong. Udall).

[7]See pp. 6-8, *supra*. *See also Inclusion of Alaska Lands in National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, Hearings on H.R. 39, H.R. 1974, H.R. 2876, H.R. 5505, et al., H.R. 1454, H.R. 5605, & H.R. 8651*, Before the Subcommittee on General Oversight and Alaska Lands of the House Committee on Interior and Insular Affairs, 95th Cong., 1st Sess., pt. XIII at 468, 484, 487, 510-528 (1977) (report discussing Arctic Slope subsistence uses of resources of the ocean and sea ice).

shelf areas. In the course of legislative proceedings, the coverage of Title VIII was extended beyond the boundaries of the conservation units to include all public lands in Alaska. *See* 16 U.S.C. §§ 3102(3), 3111, 3112. The boundaries of conservation units remained tied to maps, as they are in the Act as passed. *See* 16 U.S.C. § 3103(a). At the same time, Congress amended the savings clause, 16 U.S.C. § 3125, identifying existing statutes that were not to be considered modified or replaced by the passage of Title VIII, to include the Fishery Conservation and Management Act of 1976, in which the United States asserts exclusive jurisdiction over a fishery conservation zone that extends 200 miles offshore.[8] *See* 16 U.S.C. § 1811-12. Although other explanations may be possible, this change suggests Congress understood that title VIII applied to outer continental shelf waters.

A second example: At least one of the national wildlife refuges created by the Conservation Act (the Yukon Delta National Wildlife Refuge) has within its borders portions of the outer continental shelf and overlying waters. *See* 48 Fed.Reg. 7890, 8017 (Feb. 24, 1983). Unless these lands and waters are included in Title VIII the protection that title provides for subsistence uses would not apply to the entire Wildlife Refuge though one of the specified purposes of the Refuge is "to provide . . . the opportunity for continued subsistence uses by local residents." *See* Conservation Act, Pub.L. No. 96-487, § 303(7)(B)(iii), 94 Stat. 2371, 2392.

The most compelling reason for resolving the ambiguous language of Title VII in favor of coverage of outer continental shelf lands and waters is that Title VIII was adopted to benefit the Natives. Under a familiar rule of statutory construction doubtful language should be construed to further that purpose. *See Alaska Pacific Fisheries v. United States,* 248 U.S. at 89, 39 S.Ct. at 42; *United States v. Dann,* 706 F.2d 919 at 931, quoting *United*

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[8]*Compare* H.R. 39, § 701(g), 95th Cong., 1st Sess. (Comm.Print Oct. 12, 1977) *with* H.R. 39, as amended, § 713, 95th Cong., 2d Sess. (1978).

States v. Santa Fe Pacific R.R., 314 U.S. 339, 353-54, 62 S.Ct. 248, 255-56, 86 L.Ed. 260 (1941); *Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251, 1257 n. 6 (9th Cir.1983). Congress was specifically advised that this rule of construction would be applied to Title VIII and other subsistence provisions though not to the rest of the Act. In the course of a detailed discussion of the proposed legislation submitted to the House, Congressman Udall said with specific reference to Title VIII:

> While the [Conservation Act] obviously is not Indian legislation in its entirety, the subsistence title and the other subsistence related provisions are. And under well-recognized canons of statutory construction, any ambiguities in the title and other provisions must be resolved in favor of the Alaska Native people.
>
> This result is also consistent with the Congressional policy established by section 802(1) that the management of the public lands shall cause the least adverse impact possible on rural residents who depend upon subsistence uses.

126 Cong.Rec. 29,279 (1980). *See also* 125 Cong.Rec. 9904 (1979).

As appellees have demonstrated, reasonable arguments can also be made for a narrow construction of section 810. We find them unpersuasive, however, in light of the evidence of a contrary legislative intent and the admonition that ambiguities in Title VIII "must be resolved in favor of the Alaska Native people."

Appellees rely particularly upon reference to the Conservation Act as a "land bill" that would not inhibit development of oil and gas resources on the outer continental shelf. *See e.g.*, 125 Cong.Rec. 11,128 (1979) (statement of Rep. Udall); *id.* at 11,170 (statement of Rep. Emery). These statements were made in response to arguments that the Conservation Act "locked up" Alaskan resources. The statements did not refer to Title VIII but rather to Titles II–VII which add lands to the National Park System and other conservation units. Oil and gas exploration and pro-

duction in fact would be precluded in some of these conservation units and probably in others. Congressmen Udall and Emery were making the point that these conservation units did not include the adjacent outer continental shelf and therefore creation of such units did not preclude oil and gas development on the shelf. *See also* S.Rep. No. 413, 96th Cong., 1st Sess. 417, *reprinted in* 1980 U.S.Code Cong. & Ad.News at 5357.

These statements are not inconsistent with the position that Title VIII includes the outer continental shelf since nothing in Title VIII precludes oil and gas development in the areas to which it applies. The only restrictions imposed by section 810 are procedural ones. Once these are complied with, "the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law." Section 810(d), 16 U.S.C. § 3120(d). In the words of the Senate Report: "[O]nce the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses." S.Rep. No. 413, 96th Cong., 1st Sess. 234, *reprinted in* 1980 U.S.Code Cong. & Ad.News at 5178.[9]

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[9]The response to other arguments against a broad interpretation of section 810 may be stated briefly.

Rejection by Congress of proposals to extend the coverage of conservation units to areas beyond the territorial sea (*See, e.g.*, S.Rep. No. 1300, 95th Cong., 2d Sess. 149-50 (1978); 124 Cong.Rec. 18025-27 (1978)) is not relevant to the interpretation of Title VIII for the reason mentioned: inclusion in a Title II-VII conservation unit might bar future development, but inclusion in Title VIII would not. Moreover, the "complexity of jurisdictions" that would have resulted from extension of conservation units seaward, *id.*, would not occur under Title VIII since this title contemplates administration of both state and federal lands by the state for the purpose of this section (§ 805(d), 16 U.S.C. § 3115(d)). *See also* 126 Cong.Rec. 29280 (1980).

Other federal statutes applicable in one fashion or another to resource management on the outer continental shelf are neither so comprehensive nor inconsistent with Title VIII as to support an inference

We conclude that the ambiguous language of the Conservation Act should be interpreted to include outer continental shelf lands and waters within the coverage of section 810.

III.

Appellants ask that the lease sale be voided because the Secretary has not complied with the requirements of section 810. Appellees contend the Secretary has substantially complied with the requirements of the section, albeit acting under other statutes, and if he has not, the proper remedy is to maintain the status quo unless and until the Secretary complies with section 810, citing *California v. Watt*, 683 F.2d 1253, 1266 (9th Cir.1982), *reversed on other grounds*, ___U.S. ___, 104 S.Ct. 656, 78 L.Ed.2d 496 (1984).

These arguments raise factual and legal issues that have not been but should be considered initially by the district court.

[5] Appellants' request for attorneys' fees is denied. Assuming appellants are prevailing parties we cannot say the government's position was not "substantially justified." *See*

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that Title VIII does not apply to these areas. Section 810(b) provides expressly for situations in which both Title VIII and the National Environmental Protection Act, 42 U.S.C. § 4321, *et seq.*, will be applicable. Other statutes of general applicability mentioned by appellees (the Endangered Species Act, 16 U.S.C. § 1531-43; the Coastal Zone Management Act, 16 U.S.C. §§ 1451-54; and the Outer Contental Shelf Lands Act, 43 U.S.C. §§ 1331-56) pursue different goals by different means than Title VIII of the Conservation Act, and may be applied consistently with Title VIII.

Appellees argue that subjecting outer continental shelf lands and waters to certain provisions of the Act other than Title VIII in which the term "public lands" is used would provide "absurd and unintended consequences." We have examined the provisions relied upon by appellees and are satisfied the interpretative difficulties they suggest are resolvable. We need not examine them in detail here, however, since in any event Congress was aware that a standard of interpretation requiring resolution of ambiguities in favor of the Natives would be applicable only to Title VIII and other subsistence provisions of that Act. *See* 126 Cong.Rec. 29,279 (1980); 125 Cong.Rec. 9904 (1979).

Rawlings v. Heckler, 725 F.2d 1192, 1196 (9th Cir. 1984); *Foster v. Tourtellotte*, 704 F.2d 1109, 1112-13 (9th Cir. 1983).

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PEOPLE OF THE VILLAGE OF GAMBELL, PEOPLE OF THE VILLAGE OF STEBBINS, and NUNAM KITLUTSISTI,
Plaintiffs-Appellants,

vs.

DONALD P. HODEL, Secretary of the Interior, and U.S. DEPARTMENT OF THE INTERIOR,
Defendants-Appellees,

ARCO ALASKA, INC., AMOCO PRODUCTION COMPANY, *et al.*,
Defendants-Intervenors-Appellees.

FILED
Oct 25, 1985
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85-3877

D.C. No. A85-184
Consolidated With
A85-201

OPINION

Appeal from the United States District Court
for the District of Alaska
J.A. von der Heydt, District Judge, Presiding

Argued and submitted September 4, 1985
Seattle, Washington

Before: PREGERSON and ALARCON, Circuit Judges, and DIMMICK, District Judge*

ALARCON, Circuit Judge:

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*Honorable Carolyn R. Dimmick, United States District Judge for the Western District of Washington, sitting by designation.

The People of the Village of Gambell, et al. (hereinafter the Villages),[1] appeal from an order of the district court of Alaska denying consolidated motions for a preliminary injunction. The requested injunction would prohibit exploration for oil and gas on two tracts leased to appellees/intervenors, Arco Alaska, Inc. and Amoco Production Co., et al. (hereinafter the Oil Companies), by the United States Department of the Interior on federally owned lands in the outer continental shelf of Alaska.

We must determine whether the district court abused its discretion in failing to issue a preliminary injunction notwithstanding its determination that the Villages had a "strong likelihood of success on the merits" in light of the presumption of harm flowing from a violation of a statute and the facts in the record showing the possibility of a significant restriction of subsistence use. We conclude that the district court abused its discretion in denying a preliminary injunction because it failed to give proper weight to Congress's expressly stated policy of protecting the subsistence needs and culture of Native Alaskans against the harm which may result from the lease of public lands in the outer continental shelf.

PERTINENT FACTS

This matter is again before this court following our decision in *People of the Village of Gambell v. Clark*, 746 F.2d 572 (9th Cir. 1984) (hereinafter *Gambell I*). In *Gambell I*, the People of the Village of Gambell and the People of the Village of Stebbins brought an action in the district court to enjoin the sale of leases located in federally owned outer continental shelf land in Lease Sale 57. The Secretary of the Interior (hereinafter the Secretary) had of-

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[1]On this appeal from consolidated motions for preliminary injunction, the Villages include The People of the Village of Gambell and The People of the Village of Stebbins, two Alaskan Native Tribes organized under the Indian Reorganization Act. Also included is Nunam Kitlutsisti, an intertribal organization representing subsistence users from 56 villages of the Yukon-Kuskokwian Delta in southwestern Alaska.

fered to sell the leases for oil and gas exploration pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356 (as amended 1980) (hereinafter the Lands Act). Bids were submitted by the oil companies. Lease Sale 57 consists of approximately 2.4 million acres in the Norton Sound Basin twenty-five miles off the western shore of Alaska.

In *Gambell I* the Villages presented two arguments to the district court in support of their request for an injunction. First, the Villages contended that the sale of leases for oil and gas exploration would interfere with their aboriginal hunting and fishing rights. Second, they asserted that the Secretary failed to evaluate the impact of such laws on the subsistence culture of Native Alaskans as required by section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. §§ 3101-3233 (1980) (hereinafter the Conservation Act) prior to conducting the sales. The district court denied the Villages' motion for a preliminary injunction and granted the Secretary's motion for summary judgment. The district court held that the Villages' aboriginal hunting and fishing rights and their rights protected under section 8.0 of the Conservation Act did not extend to the outer continental shelf outside the territorial boundaries of Alaska.

In his briefs before this court in *Gambell I*, the Secretary argued that if this court " '[s]hould . . . find it appropriate to order the Secretary to carry out the procedures of section 810, there is no need to undo what has already been done. The proper role for the court is to simply maintain the status quo while the Secretary does whatever is necessary to comply.' " (Appellants' Reply Brief at 4, *quoting* Brief for Federal Appellees (*Gambell I*), at 49). The oil companies made a similar but more specific recommendation in their brief *Gambell I*. " 'If this court should hold that § 810 of ANILCA applies to the OCS [outer continental shelf], the appropriate remedy would be . . . to enjoin further activities until the Secretary completes the procedures required by the statute, if irreparable harm is shown, *see Weinberger v. Romero-Barcelo*, 456 U.S. 305

(1982).' " (Appellants' Reply Brief at 4, *quoting* Brief of Appellee Arco Alaska, Inc. (*Gambell I*), at 49).

We held in *Gambell I* that the Villages' claims to an aboriginal right to hunt and fish in Norton Sound and in the waters in the outer continental shelf were extinguished by the Alaska Native Claims Settlement Act (hereinafter Claims Settlement Act), 43 U.S.C. §§ 1601-1628 (1971), but that in section 810 of Title VIII of the Conservation Act, Congress provided protection for subsistence uses of the fish and wildlife in the waters and ice over the outer continental shelf by requiring the Secretary to evaluate the effect of a lease sale on subsistence use. *Gambell I*, 746 F.2d at 579-82. In reversing the district court's orders in *Gambell I*, we gave the following direction to the district court:

> Appellants ask that the lease sale be voided because the Secretary has not complied with the requirements of section 810. Appellees contend that the Secretary has substantially complied with the requirements of the section, albeit acting under other statutes, and if he has not, the proper remedy is to maintain the status quo unless and until the Secretary complies with section 810, citing *California v. Watt*, 683 F.2d 1253, 1266 (9th Cir. 1982), *reversed on other grounds*, ___U.S. ___, 104 S.Ct. 656, 78 L.Ed.2d 496 (1984).
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> These arguments raise factual and legal issues that have not been but should be considered initially by the district court.

Gambell I, 746 F.2d at 582-83.

Gambell I was argued before this court on October 7, 1983. On April 17, 1984, while the matter concerning Lease Sale 57 was still under submission to this court, the Secretary held a sale of leases on Lease Sale 83 in the outer continental shelf lands in the Navarin Basin off the shore of Alaska. This court filed its opinion in *Gambell I* on November 2, 1984. Due primarily to delays requested by the Secretary, the decision in *Gambell I* did not become final until mandate issued on March 2, 1985.

On April 3, 1985, the People of the Villages of Gambell and Stebbins brought a motion for preliminary injunction to halt exploratory activities on Lease Sale 57.

On April 25, 1985, the People of the Village of Gambell and the intertribal organization of Nunam Kitlutsisti filed a separate action to enjoin future exploratory activities on Lease Sale 83 and to rescind the authority previously granted to the Oil Companies in that portion of the outer continental shelf. Lease Sale 83 consists of approximately 37 million acres and is located in the water of the Bering Sea in the outer continental shelf due west of St. Mathews Island, approximately 250 miles from the mainland of Alaska.

This separate complaint was based on precisely the same grounds alleged in the prior action (*Gambell I*) concerning Lease Sale 57: i.e., that the Secretary failed to comply with section 810 of the Conservation Act prior to authorizing exploratory activities in the waters over the outer continental shelf. The district court consolidated these matters for the hearing on the Villages' motion for a preliminary injunction.

The district court applied the "traditional" test for determining whether injunctive relief is warranted, and denied the request for a preliminary injunction. The district court first explained that the Secretary did not comply with the requirements of section 810 of the Conservation Act because he failed to evaluate the subsistence impacts of the leases with the mandate of that law clearly in mind. After finding that "delay in the exploration of the OCS [outer continental shelf] may cause irreparable harm to this nation's quest for new oil resources and energy independence," the court nonetheless concluded:

(1) Movants have established a strong likelihood of success on the merits.

(2) The balance of irreparable harm does *not* favor the movants.

> (3) The public interest favors continued oil exploration, for the reason that the national interest favors OCS [outer continental shelf] oil exploration and such exploration will not cause the type of harm, a restriction in subsistence uses or resources, that ANILCA was designed to prevent.

On May 30, 1985, the district court issued a minute order *sua sponte* stating that

> The court has been informed that its denial of plaintiffs' motion for preliminary injunction will be appealed to the Ninth Circuit. In order to expedite the appeal, and for the reasons stated in this court's earlier order, the court indicates that it will not entertain a motion for stay pending appeal.

On June 6, 1985, a motions panel of this court issued an order denying the Villages' emergency motion for an injunction pending appeal. The Secretary and the Oil Companies were ordered to file, within seven days, a hold harmless agreement "that will protect appellants from any consequences resulting from significant restrictions upon subsistence uses by appellants of their lands." The motions panel retained jurisdiction of this matter for "the purpose of reimposing a temporary stay should the panel disapprove the form and substance of the hold harmless agreement." The hold harmless agreement was approved by the motions panel on June 21, 1985.

DISCUSSION

Our review of a motion for a preliminary injunction is "very limited." *Apple Computer, Inc. v. Formula International, Inc.*, 725 F.2d 521, 523 (9th Cir. 1984). "The decision to grant or deny is within the discretion of the trial court and will only be reversed if that discretion has been abused or if the decision is based on erroneous legal standards or clearly erroneous findings of fact." *Oakland Tribune, Inc. v. Chronicle Publishing Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985).

A. Applicability of the Traditional Test

This court has recognized two sets of standards for evaluating a claim for injunctive relief. We refer to one as the "traditional" test and the other as the "alternative" test. *American Motorcyclist Ass'n v. Watt,* 1714 F.2d 962, 965 (9th Cir. 1983). In *American Motorcyclist Ass'n* we described the traditional test as follows: "The traditional equitable criteria for determining whether an injunction should issue are (1) Have the movants established a strong likelihood of success on the merits; (2) does the balance of irreparable harm favor the movants; (3) does the public interest favor granting the injunction?" *Id.* at 965.

"The 'alternative' test permits the moving party to meet its burden by demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in its favor." *Id. (citing Benda v. Grand Lodge of IAM,* 584 F.2d 308, 314-15 (9th Cir. 1978), *cert. dismissed,* 441 U.S. 937 (1979); *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.,* 526 F.2d 86, 88 (9th Cir. 1975)).

We have concluded, however, that the traditional and the alternative tests are "not really two entirely separate tests, but that they are merely extremes of a single continuum." *Benda v. Grand Lodge of IAM,* 584 F.2d at 315. *Accord, Regents of University of California v. ABC,* 747 F.2d 511, 515 (9th Cir. 1984); *Los Angeles Memorial Coliseum Comm'n v. National Football League,* 634 F.2d 1197, 1200 (9th Cir. 1980). We have also noted that "[t]he difference between the two formulations is insignificant. Therefore, we accept either as satisfactory." *Benda,* 584 F.2d at 315. Because the district court employed only the traditional test, we will review the findings under that formulation. *See Regents of University of California v. ABC,* 747 F.2d at 515-16 n. 4 (where the district court made a finding that the public interest favored the issuance of the preliminary injunction, this court reviewed the district court's findings under the traditional standard).

B. Likelihood of Success on the Merits

The Villages argue that the district court properly determined that they had established "a strong likelihood of success on the merits" on their claim that the Secretary could not have substantially complied with the provisions of the Conservation Act because he did not have its mandates "clearly in mind." The district court correctly concluded that an administrative decision compelled by a land preservation statute must be made with the requirements imposed by Congress clearly in mind. *See Stop H-3 Ass'n v. Coleman*, 533 F.2d 434, 445 (9th Cir.) ("a court reviewing the Secretary's 4(f) decision must satisfy itself that the Secretary evaluated the highway project with the mandates of section 4(f) clearly in mind"), *cert. denied*, 429 U.S. 999 (1976). *Accord, Adler v. Lewis*, 675 F.2d 1085, 1092 (9th Cir. 1982).

Prior to Lease Sale 57 and Lease Sale 83, the Secretary did not have the requirements of Congress in mind because it was his contention that section 810 of the Conservation Act did not apply to land beneath the water of the outer continental shelf off the coast of Alaska. Section 810(a) of the Conservation Act provides in pertinent part as follows:

> In determining whether to . . . lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee *shall evaluate* the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

16 U.S.C. § 3120(a) (1982) (emphasis added). Therefore, in determining whether to approve Lease Sale 57 or Lease Sale 83, the Secretary did not evaluate the effect of such leases on subsistence uses and needs of the Native Alaskans who are part of the Villages.

We agree with the district court's determination that the Secretary failed to comply with the mandatory requirements of section 810(a). In *Kunaknana v. Clark*, 742 F.2d 1145 (9th Cir. 1984), we said that section 810(a) "requires the agency to evaluate the effects upon subsistence needs of leasing the particular tracts tentatively selected . . . ." *Id.* at 1151. After *Gambell I*, it is clear that section 810(a) does apply to public lands in the outer continental shelf.

The Secretary contends, however, that his compliance with the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321-4347 (1976) (hereinafter the Environmental Act or NEPA) and the Lands Act is sufficient to satisfy the evaluation provisions of section 810(a) of the Conservation Act. The Secretary asserts that "[T]here is no additional requirement that the agency decision maker have one statute in mind rather than another when he takes the action." This argument completely ignores this court's observation in *Gambell I* that section 810 was enacted because "the Secretary and the state [of Alaska] failed to heed Congress's admonition [that they take any action necessary to protect subsistence needs of Alaskan Natives]." *Gambell I*, 746 F.2d at 580.

The uncontradicted facts in this matter establish that the Secretary deliberately ignored the specific requirements of section 810(a) prior to the lease sales because of his erroneous belief that its provisions did not apply to the outer continental shelf. Nevertheless, we are now told that the Secretary complied with the Conservation Act prior to the lease sales because in meeting the requirements of the Environmental Act and the Lands Act he inadvertently considered the needs of the subsistence users. If we were to adopt this surprising contention, we would render section 810(a) superfluous and assume that its enactment was an idle act. "We should not and do not suppose that Congress intended to enact unnecessary statutes." *Jackson v. Kelly*, 557 F.2d 735, 740 (10th Cir. 1977).

It is quite true that section 810(a) makes reference to the Environmental Act. Section 810(a)(2)(b) provides as follows:

> If the Secretary is required to prepare an environmental impact statement pursuant to [Section 102(2)(c) of the National Environmental Policy Act], *he shall* provide the notice and hearing and *include the findings required by subsection (a) of this section* as part of such environmental impact statement.

16 U.S.C. § 3120(b) (1982) (emphasis added). It is clear to us from this language that Congress intended that the section 810(a) requirement that the Secretary evaluate and make findings concerning subsistence needs *supplements* any overlapping duties which he may have under the Environmental Act.

In support of his contention that compliance with the Lands Act and the Environmental Act constitutes substantial compliance with the requirements of section 810(a) of the Conservation Act, the Secretary refers us to *Life of Land v. Brinegar*, 485 F.2d 460, 474 (9th Cir. 1973), *cert. denied*, 416 U.S. 961 (1974), *Citizens Airport Comm. v. Volpe*, 351 F. Supp. 52 (E.D. Va. 1972), *Environmental Defense Fund, Inc. v. Froehlke*, 473 F.2d 346, 356 (8th Cir. 1972), *Cape Henry Bird Club v. Laird*, 484 F.2d 453, 454 (4th Cir. 1973), and *Missouri ex rel. Ashcroft v. Dep't of Army*, 526 F. Supp. 660, 667 (W.D. Mo.1980), *aff'd* 672 F.2d 1297 (8th Cir.1982). These authorities do not support the Secretary's contention that compliance with either the Lands Act or the Environmental Act constitutes de facto compliance with the Conservation Act.

In *Brinegar*, w held that an environmental impact statement prepared pursuant to the Environmental Act may be considered as the finding of no adverse environmental effect required under section 16(c)(4) of the Airport and Airways Development Act of 1970 because each statute contains virtually the same requirements. 485 F.2d at 474. In *Citizens Airport Comm.*, the district court noted, in passing, that "[t]he fact that the impact statement was

prepared for the purpose of satisfying NEPA does not prevent its being used to satisfy the requirements of § 1716 [of the Airport and Airways Development Act of 1970, 49 U.S.C. § 1701 *et seq.*] if, in fact, it contains all of the findings demanded by that provision." 351 F. Supp. at 59. In *Environmental Defense Fund, Inc. v. Froehlke,* the court held that if an agency complies with the Environmental Act, it will " 'automatically take into consideration all of the factors required by the Fish and Wildlife Act and it is not reasonable to require them to do both separately.' " 473 F.2d at 356 (*quoting Environmental Defense Fund, Inc. v. Corps of Engineers,* 325 F. Supp. 749, 754 (E.D. Ark. 1971), *vacated on other grounds,* 342 F. Supp. 1211 (E.D. Ark. 1972)). We have no quarrel with the proposition that if the environmental concerns expressed in one statute are "automatically" taken into consideration on complying with the requirements of another Act of Congress, it would not be reasonable for the courts to insist on separate reports. As noted above, however, it was the failure of the Secretary to protect subsistence needs under existing administrative authority which compelled Congress to enact section 810(a). *Gambell I,* 746 F.2d at 580.

We previously have held that "compliance with one environmental statute does not assure compliance with another." *Adler v. Lewis,* 675 F.2d at 1096. Where each statute mandate separate and distinct procedures, compliance with the requirements of one does not compel the conclusion that the provisions of the other statute were considered. *Id.* Neither the Environmental Act nor the Lands Act sets forth procedures to ensure the protection of subsistence needs and uses. In contrast, the Conservation Act was created "to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so." Conservation Act § 101(c), 16 U.S.C. § 3101(c) (1982).

As we noted in *Gambell I,* "Congress found that continuation of the opportunity of rural Alaskans to make subsistence use of fish and wildlife 'is essential to [their]

existence'." *Id.* at 580 (*quoting* Conservation Act § 801(1), 16 U.S.C. § 3111(1)(1980)). The separate and distinct procedures set forth in section 810(a) of the Conservation Act were enacted to fulfill that purpose. The Environmental Act and the Lands Act do not, by their terms, seek to advance the same Congressional goals. For purposes of resolving the issues presented in reviewing the denial of a preliminary injunction, we conclude that the district court did not err in its determination that there was a strong likelihood that the Villages would succeed at trial on the merits in their legal contention that substantial compliance with the Environmental Act and the Lands Act would not constitute automatic or substantial compliance with the Conservation Act.

The district court also concluded that the Villages had a strong likelihood of success on the merits of their contention that the Secretary violated the notice, hearing, and findings requirements of section 810(a)(1)-(3) in connection with Lease Sale 57. We agree.

Under section 810(a)(1)-(3), the Secretary is prohibited from leasing public lands without complying with the notice and hearing procedures if the agency concludes that the proposed action "may significantly restrict subsistence uses." *Kunaknana v. Clark*, 742 F.2d at 1151. After receiving this court's opinion in *Gambell I*, the Secretary conducted a post-sale study concerning Lease Sale 57. That report contains the finding that while the lease and exploration stages will not significantly restrict subsistence, development and production "may significantly restrict subsistence uses in certain areas." We made it clear in *Kunaknana* that under the express language of section 810(a)(3), the Secretary was required to comply with the notice and hearing requirements of the statute to determine *inter alia* whether " 'such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands.' " 742 F.2d at 1150-51 (*quoting* section 810(1)(3)).

The Secretary argues that he was not required to comply with the notice and hearing requirements of section

810(a)(1)-(3) prior to the sale of the leases with respect to the significant restriction of subsistence use that may develop at the production stage. The Secretary relies on *Secretary of Interior v. California,* 464 U.S. 312 (1984). His reliance is misplaced. First, in *Secretary of the Interior v. California,* the Supreme Court did not concern itself with a construction of section 810(a)(1)-(3) of the Conservation Act. The Court was faced with the question whether section 307(c)(1) of the Coastal Zone Management Act applies prior to a lease sale. *Id.* at 315. As the district court in the instant matter correctly noted, the decision of the Supreme Court that the Coastal Zone Management Act did not apply to lease sales was premised on the fact that Congress had recognized "four distinct statutory stages to developing an offshore oil well." *Id.* at 337. The four steps set forth in the Lands Act are as follows:

1. The planning of a five-year nationwide leasing program. 43 U.S.C. § 1344.

2. The lease sale. 43 U.S.C. § 1337 (a).

3. Exploration. 43 U.S.C. § 1340.

4. Development and production. 43 U.S.C. § 1351.

In the Conservation Act, however, Congress has expressly provided for a specific and detailed procedure to be followed in evaluating the impact on subsistence use of the lease of public land for exploratory activities. As this court pointed out in *Kunaknana v. Clark,* section 810(a) of the Conservation Act requires a hearing *before* a lease shall be effected if such lease "or other use, occupancy or disposition of such [public] lands" may significantly restrict subsistence use. 742 F.2d at 1150-51. "It is a basic rule of statutory construction that a specific statute controls over a general statute. *ECSC-Laundry v. United States,* 450 U.S. 1, 6 (1981). If we were to hold that the more general statute controls over the specific one, we would effectively eliminate the specific statute." *Edward D. Rollert Residuary Trust v. C.I.R.,* 752 F.2d 1128, 1133 (6th Cir. 1985).

The district court did not err in determining, for purposes of ruling on the Villages' motion for a preliminary injunction, that the Villages had demonstrated a strong likelihood of success on the merits of their contention that the Secretary failed to comply with the notice and hearing requirements of the Conservation Act concerning Lease Sale 57. We are satisfied that there is a strong likelihood of success on the merits of the Villages' argument that the specific procedural requirements of section 810(a)(1)-(3)–which are triggered by the threat of a significant restriction of subsistence use–were intended by Congress to serve as an exception to the general provisions of the Lands Act.

C. Balance of Irreparable Harm

Notwithstanding its determination that the Secretary violated the procedural requirements of section 810(a) of the Conservation Act, the district court denied the Villages' request for a preliminary injunction. The district court's ruling is not consistent with the law of this circuit. An injunction is the appropriate remedy for a substantive procedural violation of an environmental statute. *See Thomas v. Peterson,* 753 F.2d 754, 764 (9th Cir. 1985). "Irreparable damage is presumed when an agency fails to evaluate thoroughly the environmental impact of a proposed action." *Save Our Ecosystems v. Clark,* 747 F.2d 1240, 1250 (9th Cir. 1984). In *Save Our Ecosystems v. Clark,* we also noted that "[o]nly in a rare circumstance may a court refuse to issue an injunction when it finds a NEPA violation." *Id.* at 1250. " 'It does appear that any lower court, much less the Supreme Court, has ever found in a proceeding on the merits that federal actions violating NEPA could continue in opposition to the statutory mandates.' " *Id.* at 1250 n.15 (*quoting* Plater, *Statutory Violations and Equitable Discretion,* 70 Cal. L. Rev. 524, 575 (1982)).

Mindful of the law in this circuit, the district court concluded that there were unusual circumstances in the instant matter which made the issuance of an injunction "inappropriate." However, the court did not articulate the unusual circumstances upon which it relied to excuse its

duty to issue an injunction in light of its determination that there was a strong likelihood that the Villages would prevail in their contention that section 810(a) of the Conservation Act had been violated. Instead, the court found as follows:

(1) That delay in the exploration of the OCS may cause irreparable harm to this nation's quest for new oil resources and energy independence. Expedited exploration as a policy is stated in OCSLA. *See* 43 U.S.C. § 1332(3);

(2) That exploration will not significantly restrict subsistence resources; and

(3) That the Secretary continues to possess power to control and shape the offshore leasing process. Therefore, if the ANILCA subsistence studies require alteration of the leasing conditions or configuration the Secretary will be able to remedy any harm caused by the violation.

The district court relied upon *Forelaws on Board v. Johnson,* 743 F.2d 677 (9th Cir. 1984) and *Alaska v. Andrus,* 580 F.2d 465 (D.C. Cir.), *vacated in part on other grounds as moot,* 439 U.S. 922 (1978). These cases do not support the district court's conclusion that these factors justify the denial of an injunction under the circumstances of this case. Notwithstanding a violation of the Environmental Act, this court refused to issue an injunction in a matter over which it had original jurisdiction because such relief would interfere with the operation of 20-year contracts, most of which were then in the third year of their term. *Forelaws on Board v. Johnson,* 743 F.2d at 685. Here, however, the injunction was sought *prior* to the sale of any leases in the outer continental shelf; therefore, the issuance of an injunction, at the time it was requested, would not have interfered with a long-term contractual relationship. The first well on Lease Sale 83 was not spudded until June 2, 1985. The Villages' consolidated requests for injunctive relief were denied on May 23, 1985. Had the district court issued a preliminary injunction when it

was first requested, no leases would have been made until the requirements of the Conservation Act were met.

Alaska v. Andrus is factually distinguishable and contrary to the law of this circuit. First, the D.C. Circuit Court apparently does not follow the Ninth Circuit rule that injunctive relief is the appropriate remedy for a violation of an environmental statute absent rare or unusual circumstances. *See Thomas v. Peterson,* 753 F.2d at 764 ("absent 'unusual circumstances,' an injunction is the appropriate remedy for a violation of NEPA's procedural requirements"); *Alpine Lakes Protection Society v. Schlapfer,* 518 F.2d 1089, 1090 (9th Cir. 1975) (the policies underlying an environmental protection statute (NEPA) "weight the scale in favor of those seeking the suspension of all action until the Act's requirements are met"). The Ninth Circuit rule was not discussed in *Alaska v. Andrus.* Instead, the D.C. Circuit followed a rule which restricts the availability of an injunction against an ongoing project to cases where it is necessary primarily "to preserve for the relevant decisionmaker the full opportunity to choose among alternatives that is contemplated by NEPA." *Alaska v. Andrus,* 580 F.2d at 485.

This court has found "unusual circumstances" in cases which have upheld the denial of a preliminary injunction to enjoin a project from proceeding in violation of an environmental protection statute where irreparable harm *to the environment* would result if such relief were granted. *Thomas v. Peterson,* 753 F.2d at 764 n.8. Similarly, in *Alpine Lakes Protection Society v. Schlapfer,* we denied a motion for an injunction pending appeal notwithstanding the presence of substantial questions concerning the Forest Service's compliance with the Environmental Act, because the issuance of an injunction against the use of a logging road would prevent the removal of diseased trees and permit the spread of insect infection throughout the adjacent national forest lands. 518 F.2d at 1090.

In *American Motorcyclist Ass'n v. Watt,* the plaintiffs filed an action to enjoin the Secretary's plan to conserve

and protect the fragile resources in the California desert from recreational use. 714 F.2d at 963-64. The plaintiffs alleged that the plan would prevent traditional recreational vehicle use of the California desert and diminish the number of motorcycle events. *Id.* The district court expressly found that "there was a danger of harm to the fragile desert resources of the [California Desert Conservation Area] if the Plan's restrictions were lifted and plaintiffs were allowed to pursue increased motor vehicle use." *Id.* at 966. We upheld the denial of a preliminary injunction in *American Motorcyclist Ass'n v. Watt* in the face of a strong showing on the merits that the Secretary of the Interior had violated procedural provisions of the Environmental Act, because of the presence of unusual circumstances, i.e. the damage to fragile desert resources. *Id.* at 966-67. We discussed the impact of the exception to the rule set forth in *Alpine Lakes Protection Society v. Schlapfer,* requiring the issuance of a preliminary injunction upon a showing of a violation of the procedural prerequisites of an environmental statute, and explained: "*Alpine* thus authorizes the court not only to weigh the relative hardship and harms to the parties, but to examine how the greater public interest may be affected in the unusual case where enjoining government action allegedly in violation of NEPA might actually jeopardize natural resources." *American Motorcyclist Ass'n v. Watt,* 714 F. 2d at 966.

In the matter before us the district court did not and could not make a finding that the issuance of a preliminary injunction preventing lease sales would endanger the subsistence uses and resources of the waters off the coast of Alaska. In fact, the Secretary's lease sale plan poses the type of danger to the subsistence culture of Alaskan Natives that moved Congress to enact section 810(a) of the Conservation Act. In *Gambell I,* we expressed this view as follows:

> When Congress adopted the Claims Settlement Act it was aware that extinguishing Native rights might threaten subsistence hunting and fishing by Alaska Natives. The Senate version of the Claims Act in-

> cluded provisions directing the Secretary to protect subsistence uses on public lands. The Conference Committee eliminated this provision, but the Committee made it clear that it did so only because it concluded subsistence resources should be protected by the Secretary of Interior through the exercise of existing administrative authority. The Committee wrote: "The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives." *See* H. Conf. Rep. No. 746, 92d Cong., 1st Sess. 37, *reprinted in* 1971 U.S. Code Cong. & Ad. News 2247, 2250. Title VIII of the Conservation Act was enacted because the Secretary and the state failed to heed Congress' admonition.

Gambell I, 746 F.2d at 580.

The record does not disclose any unusual circumstances which threaten the environment such as those which we recognized in *Alpine Lakes Protection Society v. Schlapfer* and *American Motorcyclists Ass'n v. Watt*, which would justify denial of a preliminary injunction where there is a strong likelihood that the Villages will succeed in demonstrating that the Secretary has violated a statute directed at preserving or conserving the environment. On the contrary, the Secretary's leasing plan poses a threat to the preservation of the subsistence culture of Native Alaskans. Nor would the issuance of a preliminary injunction have interrupted the performance of long-term contracts as was the case in *Forelaws on Board v. Johnson*. We conclude, therefore, that the district court erred in finding that this is the type of rare or unusual case that justifies the denial of a preliminary injunction in the face of its conclusion that there is a strong likelihood of success on the merits.

D. Public Interest

As set forth above, the district court found that the public interest favored oil exploration in the outer continental shelf. This finding is not supported by a recitation

of the facts relied upon by the district court that would demonstrate how the district court divined the public interest.

The Secretary correctly observes that the purpose of the 1978 amendments to the Lands Act was to expedite the

> exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade . . . .

43 U.S.C. § 1802 (as amended 1978).

The Secretary continues to ignore, however, the fact that section 810(a) of the Conservation Act was adopted by Congress "to benefit the Natives" and to be "consistent with the Congressional policy established by section 802(1) that the management of the public lands shall cause the least adverse impact possible on rural residents who depend upon subsistence uses." *Gambell I*, 746 F.2d at 581 (*quoting* 126 Cong. Record 29,279 (1980)). As our highest court noted in a different context, "[t]he choice between these two policy arguments is not ours to make; it has already been made by Congress." *Secretary of Interior v. California*, 464 U.S. at 342.

Congress enacted section 810(a) in 1980 to protect the subsistence culture of Native Alaskans from exploration of the outer continental shelf that would impair their subsistence needs and uses. The Conservation Act defines subsistence uses as follows:

> [T]he customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

16 U.S.C. § 3113 (1982).

The maintenance of this subsistence economy is requisite to the literal survival of these isolated Alaskan tribal villages. On St. Lawrence Island alone, 80 percent of all food consumed annually comes from the sea and land. A substantial portion of their cash income comes from carved walrus ivory. Moreover, even if the community's physical survival is not placed in immediate jeopardy by disruptions from oil and gas exploration, the very social structure of the village is jeopardized. "A reduced availability of naturally recurring resources . . . alter[s] the depth, breadth and strength of the clans, *the organizational core of society.*" Ronald L. Little and Lynn A. Robbins, Technical Report No. 89, *Effects of Renewable Resource Harvest Descriptions on Socioeconomic and Sociocultural Systems: St. Lawrence Island*, at 304 (emphasis added). Subsistence is nothing less than "a symbolic and organizational base for their spiritual life." *Id.* at 360.

The district court's finding that the public interest favored oil exploration over the preservation of the subsistence culture of the Alaskan Natives violates the clearly expressed Congressional intent that lease sales *shall not* be conducted until the Secretary has evaluated the effect of the Oil Companies' activities on the subsistence uses and needs of Native Alaskans. The by-products of oil and gas exploration such as potential oil spills, leakage, and noise pose the threat of disruption to subsistence economy sufficient to destroy irreparably the isolated and unique culture of the Native Alaskans. *Id.* at 330-374. This error of law compels reversal.[2]

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[2]Appellees rely on *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982) for the proposition that "[a] showing of threatened irreparable harm has always been the prime prerequisite for obtaining injunctive relief." Brief for the Federal Appellees, p. 40. *Romero-Barcelo* is distinguishable from the matter before us in several important respects.

First, *Romero-Barcelo* did not involve the tension between the requirements of the Conservation Act and the Lands Act. Instead, the narrow question before the Court in *Romero-Barcelo* was stated as

E. Retroactivity

The Secretary and the Oil Companies argue that our decision in *Gambell I* may not be applied retroactively to

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follows:

> The issue in this case is whether the Federal Water Pollution Control Act (FWPCA or Act), 86 Stat. 816, as amended, 33 U.S.C. § 1251 *et seq.* (1976 ed. and Supp. IV), requires a district court to enjoin immediately all discharges of pollutants that do not comply with the Act's permit requirements or whether the district court retains discretion to order other relief to achieve compliance.

456 U.S. at 306-07. The Supreme Court observed that injunctive relief was not the only means of insuring compliance under the statute. The Court noted that "[t]he FWPCA itself, for example, provides for fines and criminal penalties. 33 U.S.C. §§ 1319(c) and (d)." *Id.* at 314. The Court construed the statute as permitting the district court "to order that relief it considers necessary to secure prompt compliance with the Act. That relief can include, but is not limited to, an order of immediate cessation." *Id.* at 320. Unlike the FWPCA, the injunctive relief we grant is the only means of insuring compliance under section 810.

In *Romero-Barcelo*, the Supreme Court contrasted the requirements imposed by Congress in the FWPCA with its construction of the Endangered Species Act (87 Stat. 884, 16 U.S.C. § 1531 *et seq.*) in *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978). In *TVA v. Hill*, the Supreme Court held that an imminent violation of the Endangered Species Act required injunctive relief. *Id.* at 172-73. In *Romero-Barcelo*, the Court summarized its holding in *TVA v. Hill* as follows:

> Refusal to enjoin the action would have ignored the 'explicit provisions of the Endangered Species Act.' 437 U.S., at 173. Congress, it appeared to us, had chosen the snail darter over the dam. The purpose and language of the statute limited the remedies available to the District Court; only an injunction could vindicate *the objectives of the Act.*

Romero-Barcelo, 456 U.S. at 314 (emphasis added).

It appears to us that in enacting section 810, Congress has chosen the protection of subsistence life over oil exploration. Thus, only the issuance of a preliminary injunction to compel compliance with the requirements of section 810 can uphold Congressional intent. "Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought." *TVA v. Hill*, 437 U.S. at 194.

Secondly, *Romero-Barcelo* is not dispositive because in that matter

Lease Sale 83. This contention was not raised in the district court. Ordinarily, we "will not . . . review an issue not raised below unless necessary to prevent manifest injustice." *International Union of Bricklayers v. Martin Jaska, Inc.*, 752 F.2d 1401, 1404 (9th Cir. 1985). However, we have the discretion to review issues raised for the first time on appeal "if it would not cause the parties to develop new facts." *Whittaker Corp. v. Execuair Corp.*, 736 F.2d 1341, 1346 (9th Cir. 1984). We will address the retroactivity issue because it does not involve a fact determination and because it is central to the case and important to the public. *Commodity Futures Trading Comm'n v. Co Petro Marketing Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982).

The Secretary and the Oil Companies rely primarily upon *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) to support their retroactivity argument. In *Chevron Oil Co.*, the Supreme Court set forth the following test for determining whether to apply a court decision retroactively:

> First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, [citation omitted], or by deciding an issue of first impression whose resolution was not clearly foreshadowed, [citation omitted]. Second, it has been stressed that 'we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its opera-

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the district court denied injunctive relief after a trial on the merits of the complaint for injunctive relief. This matter is before us on an interlocutory appeal. We do not know what evidence will be developed at trial. In the absence of a fully developed trial record, we cannot now decide whether a permanent injunction should issue in this matter. The fact, as noted by our dissenting colleague, that this court may visit this case again should not cause us to issue an advisory opinion or attempt to usurp the function of the district court. Congress has determined that interlocutory review is available to persons seeking review of an order granting or refusing an injunction. 28 U.S.C. § 1292(a)(1). The plaintiffs in this matter have properly exercised their rights.

> tion.' [citation omitted]. Finally, we have weighed the inequity imposed by retroactive application, for '[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the "injustice or hardship" by a holding of nonretroactivity.' [citation omitted].

404 U.S. at 106-07.

Applying the *Chevron* factors, we are persuaded that our decision in *Gambell I* should be applied retroactively. Although *Gambell I* established a new principle of law in construing section 810(a) of the Conservation Act as applicable to the outer continental shelf, our review of the prior history of section 810(a) of the Conservation Act and its stated purpose satisfies us that retroactive application of *Gambell I* would further the operation of a statute enacted by Congress expressly to protect subsistence uses and resources from any harmful effects resulting from oil exploration. No substantial inequitable results would occur from retroactive application. *See Barina v. Gulf Trading & Transportation Co.*, 726 F.2d 560, 563 (9th Cir. 1984) (a decision should not be applied retroactively if it would produce substantial inequitable results). The facts demonstrate unequivocally that the Secretary conducted Lease Sale 83 with knowledge that his right to do so without complying with the Conservation Act was in doubt in light of the fact that an appeal was then pending on Lease Sale 57. Any financial losses which may have been incurred by the Oil Companies were also incurred with full knowledge of the risks involved in expending money at a time when the validity of leases sold without compliance with the Conservation Act was pending before the court. Under the *Chevron* test, retroactive application of our prior decision in *Gambell I* is proper.

F. Laches

The Secretary and the Oil Companies assert that the Villages' motion for a preliminary injunction of exploratory activities on Lease Sale 83 is barred by laches. This con-

tention is predicated on the fact that this action to enjoin Lease Sale 83 was filed on April 25, 1985, more than one year after the notice of sale was published on April 17, 1984.

We agree with the Villages that the district court properly rejected the laches claim. In order to prevail on this equitable defense, the Secretary and the Oil Companies must have demonstrated that the Villages unreasonably delayed in asserting a known legal right and that this delay caused the Secretary and the Oil Companies prejudice. *See Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 779 (9th Cir. 1980). We review the district court's ruling concerning the defense of laches for an abuse of discretion. *Id.*

We conclude that the Villages' delay was reasonable for the following reasons:

(1) On March 4, 1983, more than one year before the sale was held, the Village of Gambell gave the Secretary notice that it believed that section 810 of the Conservation Act applied to leases of public lands in the outer continental shelf by filing a claim for injunctive relief concerning Lease Sale 57.

(2) On April 17, 1984, Lease Sale 83 was held.

(3) On November 24, 1984, we issued our decision in *Gambell I* wherein we held that section 810 of the Conservation Act applied to leases in the outer continental shelf. *Gambell I*, 746 F.2d at 582. On May 10, 1983, prior to Lease Sale 83, a motions panel of this court had held that there was insufficient reason to enjoin lease sales in the outer continental shelf pending appeal of the denial of the preliminary injunction requested to prevent Lease Sale 57.

(4) Thus, a challenge to Lease Sale 83 would have been useless.

Under these circumstances, the district court did not abuse its discretion in holding that the delay was reasonable and did not cause the Secretary or the Oil Companies any prejudice which was not the result of a calculated risk.

CONCLUSION

The Secretary failed to evaluate the effect on subsistence uses and needs of the Alaskan Natives prior to Lease Sale 57 and Lease Sale 83 because of his belief that section 810(a) of the Conservation Act did not apply to the outer continental shelf. For purposes of reviewing the denial of a preliminary injunction, we conclude that the district court correctly determined that there was a strong likelihood that the Villages would succeed in their claim that the Secretary failed to comply with section 810 of the Conservation Act.

The district court erred as a matter of law in concluding that these facts presented rare or unusual circumstances justifying a failure to follow the rule that a preliminary injunction should issue where a federal agency has violated the procedural requirements of an environmental protection or conservation statute. Under these facts, the issuance of a preliminary injunction would not have resulted in a belated interruption of long term contracts or interfered with any plan to *preserve* subsistence uses or to *protect* the environment. Instead, the Secretary's plan involves exploitation of finite environmental resources and a potential threat to the subsistence culture of Alaskan Natives.

The Conservation Act was amended in 1980 for the express purpose of compelling the Secretary to consider subsistence uses and needs in exploring and developing our oil resources in the public lands beneath the outer continental shelf. The public interest as expressed by Congress in the 1980 amendments to the Conservation Act requires that the uses and needs of the Alaskan Natives, and our national concern over survival of their culture,

must prevail over our possible energy needs. Thus, the denial of a preliminary injunction was error because the court misapplied the law of the circuit concerning the "unusual circumstances" exception and failed to honor the announced policy of Congress favoring the rights of Alaskan Natives over this nation's need to exploit the potential oil resources under the waters of the outer continental shelf off the shores of Alaska.

The district court is directed to enter a preliminary injunction enjoinging all activities in connection with Lease Sale 57 and Lease Sale 83 pending its determination of the consolidated claims for injunctive relief and pending resolution of the issues which it must address pursuant to the instructions of this court in *Gambell I*.

In accordance with the stipulation of the parties, the hold harmless agreement will terminate as of the date that the Oil Companies inform this court that their 1985 drilling operation in Lease Sale 57 and Lease Sale 83 have terminated and that all drilling rigs and support craft have vacated the area.

Reversed and Remanded.

Filed
Oct 25, 1985
CLERK, U.S. COURT OF APPEALS

PEOPLE OF THE VILLAGE OF GAMBELL v. HODEL

No. 85-3877

DIMMICK, J. (dissenting)—This is the second time this court has punted to the trial court. In the first appeal, *Village of Gambell v. Clark*, 746 F.2d 572 (9th Cir. 1984) ("*Gambell I*") it was clear that the Secretary of Interior had violated an environmental statute by not complying with section 810 of the Alaska National Interest Lands Conservation Act (ANILCA). The court, however, did not direct the trial court to enter an injunction. Instead, the only guidance it gave to the trial court was for it to determine "the proper remedy." *Id.* at 573. The trial court determined that, at this time, a proper remedy does not include a preliminary injunction.

The majority now tells the trial court, on the same facts available in *Gambell I*, that the trial court erred and that it must enter a preliminary injunction. Nevertheless, the majority does not tell the trial court whether a permanent injunction must be issued, or whether post-sale compliance with section 810 is acceptable. Thus, this case will probably become a trilogy.

Our review of the trial court's decision denying the preliminary injunction is limited. *Apple Computer, Inc. v. Formula International, Inc.*, 725 F.2d 521 (9th Cir. 1984). The trial court's decision to grant or deny an injunction is discretionary and will be reversed only if based on erroneous legal standards or clearly erroneous findings of fact. *Sports Form, Inc. v. United Press International*, 686 F.2d 750 (9th Cir. 1982). I find that the trial court used the correct legal standard and that its findings of fact are

supported by the record. Thus, I would affirm its discretionary decision to deny the preliminary injunction. I would also not apply *Gambell I* retroactively to Lease No. 83.

I.

The trial court found that while appellants were likely to succeed on the merits the balancing of the irreparable harms favored appellees, not appellants. It accordingly refused to issue a preliminary injunction.

The majority, in reversing the trial court's decision, advances a new rule: absent unusual circumstances, an injunction must be issued when an environmental statute has been violated.[1] The Supreme Court, however, has rejected such a rigid approach to the issuance of an injunction. In *Weinberger v. Romero-Barcelo,* 456 U.S. 305 (1982), the Navy had violated the provisions of an environmental statute—the federal Water Pollution Prevention and Control Act, 33 U.S.C. § 1251 (1982). The district court refused to enter an injunction pending compliance. The Court of Appeals for the First Circuit reversed holding that the district court was required to enter an injunction. *Romero-Barcelo v. Brown,* 643 F.2d 835 (1st Cir. 1981). The First Circuit stated that "regardless of the district court's finding that the Navy's dropping of ordinance caused no significant harm to the environment, it erred in failing to consider the judiciary's 'responsibility to protect the integrity of the . . . process mandated by Congress . . . .'" *Id.* at 861 (citations omitted). The Supreme Court reversed. The Court noted that the equitable remedy of an injunction requires flexibility and the exercise of discretion and that it should only be entered to protect a party from irreparable harm. *Weinberger v. Romero-Barcelo, supra* at 312.

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[1]The majority promulgates this rule as if it were well settled. That is not the case. If it were this court in *Gambell I* would have directed the trial court to enter an injunction since it was evident at that time that an environmental statute had been violated and that no unusual circumstances existed.

The majority does not include this case in its analysis of when an injunction should be issued for the violation of an environmental statute. (See Majority Opinion, section C.) In my opinion it is binding precedent.

While there is a presumption that irreparable harm flows from a violation of an environmental statute, *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985), such a presumption is not irrebuttable. A party opposing the issuance of an injunction may present evidence showing that no irreparable harm will occur. Appellees have done exactly that. Appellees presented the trial court with substantial evidence showing that it was highly unlikely that exploratory activities would adversely affect subsistence resources. In addition, appellees presented evidence which showed that they would have suffered irreparable harm if a preliminary injunction had been issued. At the time the district court was deciding whether to enter a preliminary injunction, Exxon, Amoco, and ARCO had committed almost $70 million in support of their plans to explore Lease Tracts Nos. 57 and 83 during the summer of 1985. If the trial court had enjoined their exploration activities their money would have been lost. The permanent loss of $70 million constitutes substantial irreparable harm. In contrast, the appellants advanced two arguments to support the presumption of irreparable harm: (1) the danger of bureaucratic commitment and (2) speculative harm to the environment. The record amply supports the trial court's conclusion that appellants would not suffer any significant harm.[2] Thus, appellees successfully rebutted the presumption which favored appellants. Accordingly, the trial court did not err in refusing to grant the injunction.

II.

The Lease No. 83 sales were conducted six and one-half months before this court filed its decision in *Gambell I*. Appellants, who were aware of Lease Sale No. 83, did

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[2]The majority fails to specify what irreparable harms appellants will suffer and I fail to find any.

not file a suit advancing the ANILCA claim as they had done in Lease No. 57. Moreover, they did not challenge Exxon's, ARCO's or Amoco's plans of exploration which were approved by the Department of Interior. Relying on these approvals, Exxon, ARCO, and Amoco committed over $60 million preparing for the 1985 drilling season. It was not until April 22, 1985, a full year after the lease sales were conducted and five months after *Gambell I* was decided that appellants filed a complaint arguing that Lease Sale No. 83 should also be voided.

In *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), the Supreme Court set forth three factors to be used for determining whether to apply a court decision retroactively.[3] The majority concedes that *Gambell I* established a new principle of law. This weighs in favor of not applying *Gambell I* to Lease No. 83. I disagree, however, with the majority's conclusions as to the other two factors.

The majority concludes, without providing an adequate explanation, that the retroactive application of *Gambell I* would further the operation of the statute. Contrary to the majority's assertion, the trial court specifically found that there is no reason to believe that any aspect of Sale No. 83 will restrict subsistence uses. Moreover, retroactive application of *Gambell I* is unnecessary to achieve the statute's goals. Instead, those goals can be fully realized by a declaration that ANILCA evaluations must be published for future Alaska OCS sales and that the evaluations must be prepared for the exploration and development/production plans of all prior sales.

Applying the third factor, the majority finds that no substantial inequitable results would follow from retroactive application. The majority views any financial loss which the appellees may have suffered as a calculated risk on their part because an appeal was pending in this court on

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[3]The three factors are: (1) does the decision establish a new principle of law; (2) will retroactive application of the decision further or retard its application; and (3) is it equitable to apply the decision retroactively. *Chevron Oil Co. v. Huson*, 409 U.S. 97, 106–107 (1971).

Lease No. 57. I do not agree. As noted earlier, appellants did not object to Lease Sale No. 83. Nor did they file any objections to the plans of exploration which were approved. When the oil companies made their expenditures they were relying on a valid court judgment and relying on approved plans of exploration. To hold that those oil companies were taking a "risk" is an unfair characterization of the circumstances. To now apply a new legal principle which is unnecessary to advance the goals of a statute defies the concept of fair play.

III.

I believe this court, as in *Gambell I,* is not giving the trial court adequate guidance. In footnote 2 of its opinion, the majority states that "[i]n the absence of a fully developed trial record, we cannot now decide whether a permanent injunction should issue in this matter." Such a statement leads me to ask: What additional facts are necessary? Can the appellants produce any additional evidence that will be relevant to the decision whether a permanent injunction should be issued? I think not. The majority holds that a violation of environmental statute, absent exceptonal circumstances, requires that an injunction be issued. The majority finds that no exceptional circumstances exist here and that the Secretary of Interior has violated an environmental statute. Therefore, under the majority's holding, a permanent injunction must be issued.[4]

This court should also tell the trial court what will constitute acceptable compliance. That is, will a section 810 analysis performed *after* a lease sale satisfy the statute's requirements? This issue is critical because the Department of Interior complied with the requirements of section 810

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[4]The majority states that if it were to decide this issue it would be usurping the function of the district court. I cannot agree that providing the trial court with adequate guidance as to the proper application of the law can ever be characterized as usurping its function.

but did so after the lease sale.[5] If a post-sale section 810 analysis will not satisfy the statute's requirements, the sales of Lease Nos. 57 and 83 must be voided. If a post-sale section 810 analysis is satisfactory, then the majority should clearly state this. Then the trial court, on remand, could determine whether the two studies done after the sale are adequate. Such a holding would not require that post-sale compliance would always be satisfactory. Under the circumstances of this case, however, allowing post-sale compliance may well be appropriate. In future lease sales, post-sale analysis may not be satisfactory since the Department of Interior now has notice that it must comply with section 810 before such sales.

The majority fails to address this issue. Consequently, the trial court will be forced once again, as it was after *Gambell I,* to decide a question of law. The losing party will appeal which will result in more delay and uncertainty as to the parties' rights. Because this issue has not been resolved, we will, in all probability, see *Gambell III* before Rambo III. I therefore dissent, respectfully.

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[5]Less than six months after *Gambell I* was decided, the Department of Interior performed a section 810 analysis for Lease No. 57 finding that the sale would not significantly restrict subsistence uses. Less than one month after *Gambell I,* the Department performed an OCS Environmental Assessment which included a section 810 analysis for Exxon's, ARCO's, and Amoco's plans of exploration for tracts in Lease No. 83. In that assessment, the Department of Interior found that the exploration proposals of the three oil companies would not significantly restrict subsistence uses.

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF ALASKA

A85-184 CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL, an Alaskan Native IRA Association, and THE PEOPLE OF THE VILLAGE OF STEBBINS, an Alaskan Native IRA Association,
Plaintiffs,

vs.

DONALD P. HODEL, Secretary of the Interior, and THE UNITED STATES DEPARTMENT OF THE INTERIOR,
Defendants,

ARCO ALASKA, INC., *et al.*,
Intervenor-Defendants.

A85-201 CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL, an Alaskan Native IRA Association, and NUNAM KITLUTSISTI, A Native Intertribal Organization,
Plaintiffs,

vs.

DONALD P. HODEL, Secretary of the Interior, and THE UNITED STATES DEPARTMENT OF THE INTERIOR,
Defendants,

AMOCO PRODUCTION COMPANY, *et al.*,
Intervenor-Defendants.

MEMORANDUM AND ORDER

THIS CAUSE comes before the court on plaintiffs' motions for preliminary injunction. In these motions plaintiffs allege that the Secretary violated § 810 of ANILCA in approving Lease Sale 57 in Norton Sound and Lease Sale 83 in the Navarian Basin. For the reasons stated below, the court finds that a violation of ANILCA occurred in each case, but that an injunction is not the appropriate form of relief. As a preliminary matter, intervenor-defendants' request for oral argument is denied to expedite the business of the court. Local Rule 5(C)(1).

The Ninth Circuit recognizes two sets of standards for evaluating claims to injunctive relief, which it has termed the "traditional" and the "alternative" tests. The traditional equitable criteria for determining whether an injunction should issue are (1) Have the movants established a strong likelihood of success on the merits; (2) does the balance of irreparable harm favor the movants; (3) does the public interest favor granting the injunction?

The "alternative" test permits the moving party to meet its burden by demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in its favor. *American Motorcyclist Ass'n v. Watt,* 714 F.2d 962, 965 (9th Cir. 1983).

I. INITIAL MATTERS

The court finds it has jurisdiction over the above actions. The provisions of 43 U.S.C. § 1349(c)(1) and (2) do not apply for the reasons stated in *People of the State of California v. Andrus,* 608 F.2d 1247, 1248-49 (9th Cir. 1979). The court also finds that laches is not applicable in that plaintiffs were reasonably diligent in bringing these actions. Finally, contrary to plaintiffs' assertions, the court finds that the Ninth Circuit did not reach the merits of whether an ANILCA violation occurred in Lease Sale 57. *See People of the Village of Gambell v. Clark,* 746 F.2d 572, 582-83 (9th Cir. 1984).

II. ANILCA'S SUBSTANTIVE EFFECT

Plaintiffs argue that Title VIII of the Alaska National Interest Lands Conservation Act, 16 U.S.C. §§ 3111-3126, (ANILCA) contains substantive requirements that the Secretary must follow in lease sale tract selection. However, Congress designed ANILCA § 810 as a procedural statute. ANILCA § 810(d), 16 U.S.C. § 3120(d); *Gambell*, 746 F.2d at 582. Once the Secretary has complied with its procedural requirements, substantive decisions will not be set aside unless they are clearly arbitrary and capricious. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971); *Latham v. Brinegar*, 506 F.2d 677, 692-93 (9th Cir. 1974). There simply is no requirement that the Secretary must "limit his tract selection to those tracts with the highest oil and gas potential."

III. ANILCA § 810: THE INITIAL REVIEW PROCEDURE

For all leases, § 810 requires the federal agency involved to evaluate (1) the effect of leases on subsistence uses and needs; (2) the availability of other lands for oil and gas leasing; and (3) other alternatives which would reduce or eliminate the effect on subsistence. *Kunaknana v. Clark*, 742 F.2d 1145, 1150-51 (9th Cir. 1984). The Secretary did make such a review here. The effect of the leases on subsistence and alternatives which would reduce or eliminate the impact on subsistence were discussed at some length in the respective EIS's for the lease sales. The availability of other lands was discussed in the context of the EIS for the Secretary's Five Year Leasing plan. *See* Intervenor-Defendants' Exs. B & C, Docket #90, A85-184. Nevertheless, since the Secretary violated ANILCA for the reasons cited below, the court does not decide today whether this discussion is sufficient under ANILCA.

The Secretary, however, assumed that ANILCA did not apply to Outer Continental Shelf (OCS) lands when he performed the above evaluations. Consequently, he did not

have the policy precepts of ANILCA in mind at the time of evaluation. The court finds that the Secretary cannot comply with ANILCA unless he evaluates the subsistence impacts of the leases with the mandate of ANILCA clearly in mind. *See Adler v. Lewis,* 675 F.2d 1085, 1092 (9th Cir. 1982); *Stop H-3 Ass'n v. Coleman,* 533 F.2d 434, 445 (9th Cir. 1976).

Congress, in enacting ANILCA, determined that previous environmental statutes and the executive branch were not providing sufficient protection for Native Alaskans' subsistence needs. *See Gambell,* 746 F.2d at 580. Title VIII of ANILCA was passed to remedy that lack of protection. It contains strong findings and policy statements favoring subsistence. ANILCA §§ 801, 802. In addition, Congress required that subsistence be considered prior to any public land disposition. *Id.* § 810; *see* S. Rep. No. 96-413, 96th Cong., 1st Sess. 234 (1979) (requirements of § 810 must be incorporated into land use planning process). This court must assume that, in passing Title VIII, Congress intended to alter the manner in which public decisions regarding land dispositions occurred. To assume otherwise would be to assume Congress intended a useless act. *See, e.g., Jackson v. Kelly,* 557 F.2d 735, 740 (10th Cir. 1977). Since the Secretary did not have the mandate of ANILCA clearly in mind, as was the case here, he could not have performed the lease sale evaluations in the manner Congress intended.

IV. FINDINGS OF NO SIGNIFICANT RESTRICTION

Plaintiffs also allege that the Secretary violated ANILCA in failing to follow the notice, hearing, and finding requirements of § 810(a)(1)-(3). Those requirements must be followed whenever the agency concludes that the proposed action "may significantly restrict subsistence uses." *Kunaknana,* 742 F.2d at 1151. The defendants argue that the lease sales did not significantly restrict subsistence in

that the actions would cause no or only "slight" disruptions in user resources or access to resources. *See id.*

Defendants and defendant-intervenors further argue that the Secretary does not need to consider the impact of the lease's development and production phases in making this determination. The Ninth Circuit has held otherwise. In *Kunaknana* it stated:

> [8] We find that the agency examined the relevant factors and did not err in its judgment. The district court's decision includes findings of fact which evidence an articulated rational connection between the facts found [by the agency] and the choice made. *Id. See* CR 111 (Decision of Record). *The agency's decision-making process included the cumulative impacts of both the entire expedited leasing program and Lease Sale 931. This is evidenced by the fact that the agency removed certain lands, such as Caribou calving areas and Black Brant molting areas, from potential leasing and included stipulations regarding subsistence use in the leases.* The agency imposed these protective lease conditions and stipulations in order to preclude *future* restrictions on subsistence uses that might be caused by activity permitted by the NPRA-A leasing program.

Id. (emphasis added). Implicit in the above passage is the holding that ANILCA requires consideration of the "entire . . . leasing program," including development, at the lease stage.

In order to assure that procedural environmental statutes are implemented to the fullest extent possible, it is important that all environmental consequences be considered as early in the process as is meaningfully possible. *See Village of False Pass v. Watt*, 565 F. Supp. 1123, 1135-36, 1145 (D. Alaska 1983), *aff'd*, 733 F.2d 605 (9th Cir. 1984). As the court stated there:

> I note, however, that consideration at the leasing stage of potential or anticipated environmental con-

> sequences relating to exploration, development and production activities serves a number of important objectives. The inclusion into a leasing stage environmental impact statement of known environmental information relating to later exploration or development activities which may in some way bear significant relationship to the leasing decision or to the preliminary activities serves to alert the Secretary to any environmental consequences which may be irreversible. Information relating to potential or anticipated environmental consequences may also focus on the need to develop further information necessary for adequate discussion and consideration in an exploration or development and production environmental impact statement. Finally, the legislative scheme providing for several administrative decisions along the progression from leasing through production should not unnecessarily weaken the legislative objectives underlying the National Environmental Policy Act, the Endangered Species Act, the Marine Mammal Protection Act, or other acts serving to protect the environment. On the other hand, although known environmental consequences relating to a later stage ought to be included in a leasing stage environmental impact statement, it is not necessary to include information about environmental consequences which are conjectural or speculative, and will remain so until exploration or development.

Id. at 1145. *Accord, North Slope Borough v. Andrus*, 642 F.2d 589, 608 (D.C. Cir. 1980). ANILCA, like the Endangered Species Act and NEPA, therefore requires that development and production impacts be addressed at the lease stage. To segment the lease sale process, as defendants suggest, would thus run counter to the process required for effective environmental review. *See also Thomas v. Peterson*, 753 F.2d 754, 759-60 (9th Cir. 1975) (requiring early consideration of environmental impacts in multi-phase project); *Village of False Pass v. Watt*, 733 F.2d 605, 608-09 (9th Cir. 1984) (ESA applies at lease stage).

Secretary of the Interior v. California, 104 S. Ct. 656 (1984), does not counsel to the contrary. The Supreme Court in that case ultimately depended on the unique statutory language and legislative history of OCSLA and the CZMA. Given that the court held that the ESA and NEPA continued to apply at the lease stage, it is probable that the court's holding was limited to the issue before it. *Id.* at 670. *See also* 43 U.S.C. § 1346(a), (d) (requiring study of environmental impacts prior to leasing).

A. Lease Sale 57

In preparation for this litigation, the Minerals Management Service prepared an ANILCA § 810 "significant restriction" study. In this study, the MMS found that the lease and exploration stages will not significantly restrict subsistence, but that development and production "may significantly restrict subsistence uses in certain areas" if oils is discovered. *See* Def. Ex. A at 3. Given that the agency found a significant restriction on subsistence may occur, the notice, hearing and findings requirement of § 8109(a)(1)-(3) are triggered. The failure of the agency to follow those procedures is a violation of ANILCA. *See* 5 U.S.C. § 706(2)(A) & (D).

B. Lease Sale 83

In the FEIS prepared for Sale 83, the Secretary specifically found that for the lease sale, including development and production, "[i]mpacts on subsistence patterns from the proposal are negligible to nonexistent." FEIS at IV-84. Plaintiffs challenge this finding on the grounds that this conclusion is inconsistent with other findings in the FEIS and Secretarial Issue Document (SID). Elsewhere, the FEIS states:

> Pinnipeds breeding, migrating, and molting in the lease area when ice is present could experience substantial losses from oilspills or disturbance. Walrus, and perhaps ribbon seals could experience moderate regional effect. . . .

Id. at IV-42. The FEIS also noted that under a worst case analysis, "one third of the entire bowhead whale population could be exposed to adverse effects." *Id.* at IV-65.

The conclusion of no significant restriction, in face of the above findings, is not arbitrary and capricious. *See Kunaknana,* 742 F.2d at 1151 (stating standard of review).[1] The worst case analysis is speculative, and given the continuing requirements of the Endangered Species Act and Secretarial control over leasing, highly unlikely to occur. Any "moderate" affect on the walrus population is equally unlikely to affect subsistence, given the current abundance of the species. FEIS at IV-83. The court finds the Secretary considered the relevant factors and there was not a clear error of judgment.

V. APPROPRIATE REMEDY

Absent unusual circumstances, an injunction is the appropriate remedy for the violation of a procedural environmental statute, such as ANILCA § 810. *Thomas v. Peterson,* 753 F.2d 754, 764 (9th Cir. 1985). Irreparable harm is presumed to flow to plaintiff by reasons of the violation. *Id.; Save Our Ecosystems v. Clark,* 747 F.2d 1240, 1250 (9th Cir. 1984). Nevertheless, in unusual circumstances, an injunction may be inappropriate. *Forelaws on Board v. Johnson,* 743 F.2d 677, 686 (9th Cir. 1984); *State of Alaska v. Andrus,* 580 F.2d 465, 485-87 (D.C. Cir. 1978).

The court finds in the instant case:

(1) That delay in the exploration of the OCS may cause irreparable harm to this nation's quest for new oil re-

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[1]Plaintiffs do not argue here that the Secretary's determination of "significant restriction" should be reviewed under the "rule of reason" and accordingly this court, like the *Kunaknana* court, does not reach the issue of whether arbitrary and capricious or the "rule of reason" is the correct standard of review. *Cf. Foundation for North American Wild Sheep v. United States Dept. of Agriculture,* 681 F.2d 1172, 1177 n.24 (1982) (applying "rule of reason" under NEPA).

sources and energy independence. Expedited exploration as a policy is stated in OCSLA. *See* 43 U.S.C. § 1332(3);

(2) That exploration will not significantly restrict subsistence resources; and

(3) That the Secretary continues to possess power to control and shape the off-shore leasing process. Therefore, if the ANILCA subsistence studies require alteration of the leasing conditions or configuration the Secretary will be able to remedy any harm caused by the violation.

Applying the traditional test for preliminary injunction the court finds:

(1) Movants have established a strong likelihood of success on the merits;

(2) The balance of irreparable harm does *not* favor the movants;

(3) The public interest favors continued oil exploration, for the reason that the national interest favors OCS oil exploration and such exploration will not cause the type of harm, a restriction in subsistence uses or resources, that ANILCA was designed to prevent.

Based on the above the court finds an injunction preventing oil exploration is inappropriate under the facts of this case.

Accordingly, IT IS ORDERED:

THAT plaintiffs' motion for preliminary injunction is denied.

DATED at Anchorage, Alaska, this 23rd day of May, 1985.

BY ORDER OF THE COURT:

JAMES A. VON DER HEYDT
UNITED STATES DISTRICT JUDGE

Chief Deputy Clerk

APPENDIX D

JUDGMENT

UNITED STATES COURT OF APPEALS,
FOR THE NINTH CIRCUIT.

No. 85-3877
A85-184 cons. A85-201

PEOPLE OF THE VILLAGE OF GAMBELL, PEOPLE OF THE VILLAGE OF STEBBINS, AND NUNAM KITLUTSISTI,
Plaintiffs-Appellants,

VS.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND U.S. DEPARTMENT OF THE INTERIOR,
Defendants-Appellees,

ARCO ALASKA, INC., AMOCO PRODUCTION CO., *et al.*,
Defendants-Intervenor-Appellees.

APPEAL from the United States District Court for the District of

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of ALASKA (ANCHORAGE) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is REVERSED & REMANDED

Filed and entered October 25, 1985

APPENDIX E

List Required by Rule 28.1

Amoco Production Company

Amoco Corporation
Amoco Company
Amoco Credit Corporation
Analog Devices Inc.
Cetus Corporation
Cyprus Mines Corporation

Arco Alaska, Inc.
Atlantic Richfield Company

ABE Beverage, Inc.
Agro International, S. de R. L. de C.V.
Almeg Extrusion Company, Inc.
Alpart Farms (Jamaica), Ltd.
Alumina Contractors, Ltd.
Alumina Partners of Jamaica
Alyeska Pipeline Service Company
Ambler Mining Company
Anaconda Exploration New Zealand Limited
Anaflex, S.A. de C.V.
Anamax Mining Company
Anamet, S.A. de C.V.
ARCO Australia Coal Pty., Ltd.
ARCO Chemical IBERICA, S.A.
ARCO Oil Limited
ARCO Solar Nigeria, Ltd.
Arilan, S.A. de C.V.
Arpet Petroleum Limited
A/S Skaland Graftiverk
Atlantic Richfield Oil Limited
Atlantic Richfield de Mexico, S.A. de C.V.
Aughinish Alumina, Ltd.
Aughinish Estates Limited
Aughinish Finance, Limited

Aughinish Property (Nominees), Limited
Badger Pipeline Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
British American Metals Company, Limited
Candel International, Limited
Caribou-Chaleur Bay Mines Ltd.
Caribou-Smith Mines Ltd.
Chile Copper Company
Cobre de Hercules, S.A.
Cobre de Mexico, S.A.
Cobrecel, S.A. de C.V.
Colonial Pipeline Company
Compania Minera Dos Repbulicas S.A. de C.V.
Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Compania de Petroleo Ganso Azul, Ltda.
Cook Inlet Pipe Line Company
Copro San Luis, S.A. de C.V.
Curragh Coal Sales Co. Pty. Ltd.
Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.
85819 Canada Limited
Eisenhower Mining Company
Empresa de Comercio Exterior Mexicano, S.A. de C.V.
Ericsson
Flower Street Limited
Gravity Adjustment, Inc.
Greater Pacific Limited
Griffith-Consumers Company
Hardy Oil Company
Imperial Eastman de Mexico, S.A.
Impulsora De Cobre, S.A. de C.V.
Indelta, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.

Iricon Agency Ltd.
Jamaica Alumina Security Company Ltd.
Kenai Pipe Line Company
Kronos, Computation y Teleproceso, S.A. de C.V.
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company
Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.
Manufacturas de Cintas Metalicas, S.A.
Manufacurera Mexicana De Partes Para Automoviles, S.A. de C.V.
Mayflower Mining Company
Mexicana de Cospeles, S.A. de C.V.
R. W. Miller (Holdings) Limited
Minera Anaconda Limitada
Montoro, Empresa Para La Industria Quimica
Nacional de Cobre, S.A.
New Bingham Mary Mining Company
Nihon Oxirane Company, Ltd.
Nordisk Mineselskab A/S
P. T. Arutmin Indonesia
Park City Ventures
Park-Cummings Mining Company
Park-Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Platte Pipe Line Company
Prince Consolidated Mining Company
Productos Especiales Metalicos, S.A.
Productos Laminados de Cobre, S.A. de C.V.
Richfield U.K. Petroleum, Limited
Rodman, Inc.
Saudi Cable Company
Servicios Industriales Nacobre, S.A.
Sinclair (U.K.) Oil Company Limited
Sinclair Venezuelan Oil Company
Smoke House Copper Mining Company
Sociedade Anonima Marvin
Solar Energy Center (E.C.)

Solvamex, S.A. de C.V.
Stup & Costello, Inc.
SUMIARCO Company Limited
Swecomex, S.A.
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Transcobre, S.A. de C.V.
Trans Mountain Oil Pipe Line Company
Tubos Flexibles, S.A.
Union de Credito Industrial Vallejo, S.A.
United Park City Mines Company
The Walworth Company
West Mayflower Mining Company
William Prym de Mexico, S.A.

Exxon Corporation

Abu Dhabi Company for Onshore Oil Operations
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C.A.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
AFCO AB
Aishin Sekiyu K.K.
Aktiebolaget Svensk Petroleumadministration
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
A/S Futurum
A/S Hydrantanlaegget Kobenhavns Lufthavn, Kastrup
Asakawa Sekiyu K.K.
Asociacion Civil "Academy La Castellana"
Atlas Supply Company
Atlas Supply Company of Canada Limited

Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
B. V. Autoservicebedrijf "de Beuk" Leimuiden
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K.K.
Bayerische Erdgasleitung G.m.b.H.
BEB Gewerkschaften Brigitta und Elwerath Betriebsfuhrungsgesellschaft m.b.H.
Bel-Air Entreposage S.A.
Building Products of Canada Limited
Byron Creek Collieries (1983) Limited
Canada Wide Mines Ltd.
Carnduff Gas Limited
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.
Cia Refinadora Petrolera Santo Domingo, Inc.
Colmant Cuvelier Dodge S.A.
Commercial Polymers Pty. Ltd.
Compagnie d'Etancheite Africaine en Cote. d'Ivoire S.A.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
DFTG Deutsche Flussigerdgas Terminal GmbH
Daihatsu Sekiyu K.K.
Daiichi Kouyu K.K.
Daitsu Sangro K.K.
Delta Rope & Twine Limited
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Det Gronlandske Olieaktieselskab
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited

Dixie Pipeline Company
Dodge de Mexico S.A. de C.V.
Drivmedelscentralen Aktiebolag
Dukhan Service Company
E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eiko Sekiyu K.K.
Ejendomsaktieselskabet af 12.juni 1964
Elwerath Erdol und Erdgas AG
Emirates Oilfield Chemicals Company
Emori Sekiyu K.K.
Emsland-Erdolleitung G.m.b.H.
Entrepot Petrolier de l'Aveyron (E.P.A.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Escuela Las Morochas, C.A.
Esso Chimie
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Italiana S.p.A.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Societe Anonyme Francaise
Esso Standard Tunisie S.A.
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
F. T. Giken Kabushiki Kaisha
Federal Pacific Electric de Mexico S.A. de C.V.
Federal Pioneer Limited
Ferngas Nordbayern G.m.b.H.
Derngas Salzgitter GmbH
Forenade Svenska Oljeimportorers AB
Forjas de Colombia, S.A.
415572 Ontario Inc. (operating as Kentom Steel)
Fuji Kogyo K.K.
Fuji Unyu K.K.
Fukui Sekiyu K.K.

General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane-Lavera
Gewerkschaft Brigitta
Gewerkschaft Elwerath
Gewerkschaft Elwerath & Co. GmbH.
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gilbarco do Brasil S.A.-Equipamentos
Goroku Sekiyu K.K.
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier du Finistere G.I.E.
Groupement pour l'Etude d'un Pipeline Bordeaux Toulouse
Hankyu Ferry K.K.
Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Seikiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroschima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokuyu Sekiyu K.K.
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft
Immeuble Entretien Service I.E.S.
Imperial Oil Limited
The Imperial Pipe Line Company, Limited
Inada Ekka Gas Kabushiki Kaisha
Industrias Reliance S.A. de C.V.
Industry Promotion Enterprises Limited
Intecom, Inc.

Interface Mechanisms Inc.
Internationale Gas Transport Maatschappij B. V.
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line Limited
Interprovincial Pipe Line (NW) Ltd.
Iranian Oil Participants Limited
Iranian Oil Service (Holdings) Limited
Iranian Oil Service Limited
Iraq Petroleum Company, Limited
Iraq Petroleum POensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho
K.K. Genetech
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Niimi Kirun
K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toko
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S ejendomsselskabet af 8 oktober 1967
K/S Hoje Taastrup Storcenter IIK/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Kawasaki Naiko Kabushiki Kaisha
Keihin Kygnus Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.

Kenarin Agencies Ltd.
Kenya Petroleum Refineries Limited
Kepco Mfg. Inc.
Kibo Sekiyu Hanbai K.K.
Kinwa Sekiyu K.K.
Kobe Port Service Kabushiki Kaisha
Kobe Standard Sekiyu K.K.
Kowa Sekiyu K.K.
Kowloon Electricty Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kyngus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kyngus Sekiyu K.K.
Kyushu Eagle K.K.
LPL Investments, Inc.La Compagnie Electrique Pioneer du Quebec, Inc.
Lakehead Pipe Line Company, Inc.
Laykold Corporation
LEAG Aktiengesellschaft fur luzernisches Erdol
Les Docks des Petroles d'Ambes
Les Restaurants Le Voyageur Inc.
Long Beach Oil Development Company
Magota Sekiyu K.K.
Mainline Pipelines Limited
Makoto Sekiyu Kabushiki Kaisha
Maple Leaf Petroleum Limited
Maquinas de Coser y Bordar Sigma, S.A.
Mars-Alcatel, S.A.
Marugo Gas K.K.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Mikawa Bussan K.K.
Mittelrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
NPC Services, Inc.

Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Neptune Bulk Terminals (Canda) Ltd.
Niagara Structural Steel (St. Catharines) Limited
Nichimo Kabushiki Kaisha
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Norddeutsche Oelleitungs-gesellschaft m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Nord-West Oelleitung G.m.b.H.
Norforge Inc.
Norsteel Limited
Northern Steel Co. Ltd.
Northward Developments Ltd.
Northwest Company, Limited
Nottingham Gas Limited
Office Prive d'Assurances et de Courtages
Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
Omnisport Australia International Pty. Ltd.
Omnisport B.V.
Omnisport International Inc.
Omnisport International (U.K.) Limited
Omnisport International (U.S.) Inc.
Omniturf Surfaces (N.A.) N.V.
107580 Canada Inc.

139675 Canada Limited
140129 Canada Limited
140233 Canada Limited
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K.K.
P. T. Stanvac Indonesia
Pars Investment Corporation
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Peteroleum Tankship Company, Inc.
Petrosvibri S.A.
Photonic Automation Inc.
Pinpoint Retail Systems Inc.
Pipeline Service
Pipeline Service Iran
Pipeline Service U.K.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafen-Harburg GmbH
Portland Pipe Line Corporation
Potencia Industrial S.A.
Productos Lorain de Mexico S.A. de C.V.
Progas A/S
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla S.A.
Reliance Electric & Engineering Company de Mexico S.A. de C.V.
Reliance Electric Limited
Reliance Electric S.A. (Spain)
Renix Co. Ltd.
Renown Building Materials Limited
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur Territoire Genevois (SAPPRO)

S.O.P.-Societa Oleodotti Padani S.p.A.
Saitama Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanwa Kasei Kogyo Kabushiki Kaisha
Sanyo Sekiyu K.K.
Saraco S.A.
Saudi Arabian Lube Additives Company Limited
Schubert KG
SEAG Aktiengesellschaft fur schweizerisches Erdol
Sibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Self-Service de Blaak B.V.
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoka Sekiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K.K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifants de Madagascar"-PROLUMA S.A.
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere du 195 Avenue de Neuilly

Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobilere "Les Casseaux-Bougainville"
Societe de al Raffinerie d'Alger
Societe de la Refinnerie de Lorraine
Societe de Manutention de Carburants Aviation
Societe de Manutention de Carburants Aviation Dakar-Yoff, S.A.
Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Developpement d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Depot Petrolier d'Hanconcourt
Societe du Parking du Square Boucicaut
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso Rep
Societe "Geomines-Caen"
Societe Havraise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petroliers S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera

Suddeutsche Erdgas Transport Gesellschaft mit beschrankter Haftung
Suntech Company, Ltd.
Supertex, Inc.
Svensk Petroleumlagring Tre Aktiebolag
Sydis, Inc.
Syncrude Canada Ltd.
Synergistics Chemicals Limited
305120 Alberta Ltd.
346877 Ontario Limited
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taglu Enterprises Ltd.
Taihei Bussan K.K.
Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A.G., Mellingen
Tanklager Altishausen A.G.
Tanklager Gesellschaft
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
TecSyn International Inc.
Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tokai General Sekiyu Hanbai K.K.
Toko Sekiyu K.K.
Toledo Scale Company de Mexico S.A. de C.V.
Toledo Werk GmbH
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha

Tonen Technology K.K.
Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Trans-Arabian Pipe Line Company
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG-Unterflurbetankungsanlage Flughafen Zurich
Ulupna Estates Limited
Van Salt Water Disposal Company
W.A.G. Pipeline Pty. Ltd.
W.H. Adam, Ltee, Ltd.
Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Westdeutsche Erdolleitungs-G.m.b.H.
Westgas G.m.b.H.
Williamsport Properties Limited
Winnipeg Pipe Line Company Limited
Wohnungsbaugesellschaft, Steimbke-Rodewald G.m.b.H.
Worex Distribution
Worex et Cie
Worex S.A.R.L.
Wrenford Insurance Company Ltd.
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Keisha Nishi Kobe Bosai Center
A.B.C.-Azienda Briantea Carburanti S.r.l.
Administravia Industrias Relianoe S.A. de C.V.
Association Petroliere, Belge
Azienda Carburanti Lubrificanti Affini, S. p. A.-Milano (ACLAM)
Beaverhill Resource Limited
Computer Centrum Groningen B.V.

D.O.C. Dutch Offshore Consortium B.V.
Dai Nippon Jushi Kabushiki Kaisha
Demulsificantes Del Orinoco, C.A.
Engycalor-Energia Calore S.r.l.
Esso Chemical Alberta Limited
Esso Reunion
Exxon S.r.l.
FALCA S.p. A.
Gasunie Engineering B.V.
I.C.I.O.M.-S. p. A.-Importazione Carboni Industria Olii Minerali
Ivrea Petroli Affini Gas (I.P.A. Gas) S. r. l.
Leco Inc.
Limburgsche Maatschappij voor Gasdistributie Limagas N.V.
Maasvlakte Olie Terminal N.V.
Maasvlakte Coal Terminal B.V.
Maatschappij voor Intercommunale Gasdistributie Intergas N.V.
Maatschappij voor Intercommunale Gasvoorziening in Oost-Brabant "OBRAGAS
Mediterranea Bitumi, S. p. A.
NAM- K 7 B.V.
NAM-K 14 B.V.
NAM-K 15 B.V.
NAM/CLOMS-K 8/K 11 B.V.
NAM/CLOMS-L 13 B.V.
N.V. Nederlands Gasunie
Nederlands Aardolie Maatschappij B.V.
Oil Spill Response Limited
Rotterdam Antwerpen Pijpleiding (Belgie)
S.C.O.C.-Societa Commercio Olii Combustibili S. p. A.
Societe Belge de Transport par Pipeline
Standard Oil S.r.l.
Tanklager Gesellschaft, Koln
Toscana Lavorazione Petroli S. p. A.
Union des Raffineurs Belges "U.R.B."
Wartempomp Nederland B.V.
Westgastransport B.V.

Worex

Mobil Exploration & Producing Services, Inc.
Mobile Corporation
Mobil Oil Corporation

AB Djurgardsberg
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO (Blasbjerg) Limited
AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH
AK Chemie GmbH & Co KG
Akauma Rekisei Kogyo Kabushiki Kaisha
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama, A.S.
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Ammenn GmbH
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian Energy Company Limited, The
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.
Arabian Trading Company S.A.
Aral Aktiengesellschaft
A/S Fjellvegen
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Saraha S.A.
Australian Synthetic Rubber Company Limited

Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anonim Sirketi
B.V. Beheeramaatschappij MOBEM
Bayerische Erdgasleitung GmbH
Bin Sulaiman Mobil Towers
Bayerische Mineral Industrie A.G.
Beer GmbH
Beer GmbH & Co. Mineralol-Vertriebs-KG
Bosques Nacionales, Ltda.
Brazos Heights Housing Incorporated
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation
Canner's Steam Company, Incorporated
Cansulex Limited
Canyon Reef Carriers, Inc.
Cartoenvases Valencia, S.A.
Carton de Colombia, S.A.
Carton de Venezuela, S.A.
Cartones Nationales, S.A.
CAS (Combined Automation Systems) B.V.
Celmimia Shipping Corporation
Celulosa y Papel de Colombia, S.A.
Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercers S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Gas Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Colonial Pipeline Company
Comet-Brennstoffdienst GmbH
Commercial Polymers Pty. Ltd.
Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun
Compagnie D'Entreposage Communautaire
Compagnie Rhenane de Raffinage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania Colombiana de Empaques Bates, SSA

Compania Colombiana De Forestacion S.A.
Compania de Lubricants de Chile Limitada (Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales, S.A. de C.V.
Consortium Raymond Duez
Constructora Calle 70, S.A.
Cook Inlet Pipe Line Company
Corrugadora de Carton, S. A.
Cyprus Petroleum Refinery Limited
D. Muhlenbruch GmbH
D. Muhlenbruch GmbH & Co. KG
Dai Nippon Jushi K.K.
Dearborn Land Company
De. Ba. S.p.A.-Industria Petrolifero Deposito di Bari
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Depot de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Pentosin-Werks GmbH
Deutsche Transalpine Oelleitung GmbH
Dicomi S.r.l.
Dixie Pipeline Company
Drivmedelscentralen AB
Dukhan Services Company
East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
East Texas Salt Water Disposal Company
Emoleum (Asphalts) Limited
Energas S.r.l.
Entrepot Petrolier de Chambery
Entrepot Petrolier de Dijon
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de Nancy
Entreprise Jean Lefobvre
Erdgas-Yerkaufs-Gesellschaft GmbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oHG
Erdoelbetrieb Reitbrook

Etablissments Bouthenet
Ets. Le Goff
Ets. R. Saillard
Europetrol S.p.A.
Faavang Autoverksted A/S
FACEL
Fairwind Maritime Company, S.A.
Felix Oil Company
Fibil, S.A.
Fibras Internacionales de Puerto Rico, Inc.
Filtros De Costa Rica S.A.
Finsbury Printing Limited
Frome-Broken Hill Company Proprietary Limited
Fruehmesser Mineraloelhandels GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha
Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.
Gatwick Refueling Services Limited
Gas Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.
Groupement Petrolier Aviation G.P.A.
Groupement Petrolier De Brest (GPB)
Handelmaatschappij Hugenholtz & Co. B.V.
Haniel Handel GmbH
H. van der Heijden Service Stations B.V.
Heizoel-Handelsgesellschaft mbH
Hellas Gas Storage Company S.A.
Hormoz Petroleum Company
Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt
Imbert G. Distribution De Produits Petroliers
Inmunizadoras Unidas, S. A.
Industria De Carbon Del Valle Cauca, S.A.
Industria Interamericana De Filtros Ltda. (INTER-FIL)

Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions Limited
Iraq Petroleum Transport Company Limited
Iside, S.p.A.
Istanbul Petrol ve Makine Yaglari Limited Sirketi
Italoil S.p.A.
Japan Airport Fueling Service Co. Limited
J.E.C.O.P.
K.K. Sankyo Plastics
K.K. Toresen
Kanto Kygnus Sekiyu Hambai K.K.
Kawasaki Kygnus Sekiyu Hambai K.K.
Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineraloel KG
Kobe Port Service Kabushiki Kaisha
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Seikyu Kabushiki Kaisha
Kyokyto Petroleum Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha
Leporati S.p.A.
Les Supermarches De Cote D'Ivoire
Likit Petrol Gazi ve Yakit Ticaret A.S.
Loba Chemie Gesellschaft mbh
Lubricantes del Sur, S.A.
Marceaux & Cie
Matoo Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
Mediterranean Refining Company
Meentzen & Franke GmbH & Co.
Mertl GmbH
Mineralol-Handels-Gesellschaft Mbh

Mobil Ami, S.A.
Mobil Atlas Sociedad Anonima de Capital Variable
Mobil Comercio, Industria e Servicos Ltda.
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG
Mobil Nile Oil Company
Mobil Oil Gabon
Mobil Oil Ghana Limited
Mobil Oil Maroc
Mobil Oil Nigeria Limited
Mosul Petroleum Company Limited
Motel Rest SA
Mt. Marrow Blue Metal Quarries Pty.
Near East Development Corporation
Neptune Bulk Terminals (Canada) Ltd.
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
New Zealand Synthetic Fuels (Housing) Corporation Limited
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nottingham Gas Limited
Nuova Europetrol S.p.A.
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Occidental de Empaques, Ltda.
Octel Associates
Octel S.A.
Oilkol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit beschrankter Haftung
Olympic Pipe Line Company
Osage Pipe Line Company
P.T. Arun Natural Gas Liquefaction Company
P.T. Berau Coal

P.T. Stanvac Indonesia
Paloma Pipe Line Company
Pars Investment Corporation
Paul Harding Mineralole GmbH & Co. KG
P.G-Groep B.V.
Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Development (Cyprus) Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company Inc.
Petrol Fuel S.p.A.
Petrolrif S.p.A.
Petromin Lubricating Oil Co.
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.
Pipe Line Banal de La Goulette
Plegadizos para la Industria S.A.
Poly Oil Chimie (P.O.C.)
Qatar Petroleum Company Limited
Qualbank, Inc.
Rainbow Pipe Line Co., LTD
Reforestadora Andina, SA
Reforestadora del Cauca, S.A.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Road Binders (Proprietary) Limited
Rohol-Aufsuchungs Gesellschaft mbH
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Santa Clara Waste Water Company
Sanwa Kasei Kogyo Kabushiki Kaisha
Sarni S.p.A.
Saudi Arabian Maritime Company
Saudi Can Company, Ltd., The
Saudi Chemical Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited

Saudi Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushi Kaisha
SENRCO
Seram Societa per Azioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The
Sociedad Calle 67, Ltda.
Sociedade Portugal Marrocos SARL
Societe Italiana per L'oleodotto Transalpino, S.p.A.
Societe Africane de Raffinage
Societe Alfred Ott & Cie
Societe Belge de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication De Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha
Societe Civile Immobiliere Courcelles-Etoile
Societe Civile Immobiliere de Construction de 34 Avenue du General Loclerc a Boissy-St-Leger
Societe Civile Immobiliere de Construction "La Residence Brune"
Societe Civile Immobilere du 10 Bd. de la Republique A La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Dahomeenne d'Entreposage de Prodùits Petroliers
Societe d'Armement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CB 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Gastion des Stocks Petroliers de Cote D'Ivorie
Societe de Manutention de Carburants Aviation (S.M.C.A.)
Societe de Manutention de Carburants Aviation Dakar-Yoff

Societe de Manutention de Carburants Aviation de Tahiti (SOMCAT)
Societe de Materialx d'Etanchoitze Pour Le Entreprises (Maple)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)
Societe d'Entreposage de San Pedro (SESP)
Societe d'Entreposage de Petrolier Oau Brundi
Societe d'Habitations a Loyer Modere de la Seine Maritime
Societe des Bitumes et Cut-Backs du Cameroun
Societe Des Huiles Lemahieu
Societe de Pipe-Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entreposage de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles de Lattaquie (Syrie) S.A.
Societe Ivoirienne de Fabrication de Lubrifiants (S.I.F.A.L.)
Societe Ivoirenne de Raffinage
Societe Mauritaneinne d'Entreposage de Produits Petroliers
Societe Malienna D'Entreposage (SME)
Societe Nationale de Raffinage (Sonara)
Societe Nouvelle pour l'Epuration des Huiles de Transformateurs-Septra
Societe Pizo De Formulation De Lubrifiants (PIZOLUB)
Societe Tahitienne de Depots Petroliers
Societe Tchadienne D'Entreposage de Produits Petroliers
Societe Togoliase d'Entreposage (STE)
Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saakatchewan Pipe Line Company

Stratjford Transport, A.S.
Sydney Metropolitan Pipeline Ety. LTD
Syria Petroleum Company Limited
System Plaza Inc.
T.R. Miller Mill Company, Inc.
Tanklagergesellschaft Koln-Bonn
Tecklenburg GmbH
Tecklenburg GmbH & Co. Energiebedarf K.G.
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
T. M. Duche Co., Inc.
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tonen Energy International Corp.
Tonen Maintenance Kabushiki Kaisha
Tonen Kekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology Kabushiki Kaisha
Total Centraficaine de Gestion (TOCAGES)
Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.
Transalpine Finance Holdings S.A.
Transalpine Celleitung in Oesterreich Gessellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgas Umschlags-Lager-Und Transport Gesellschaft MbH
Turkish Petroleum Company Limited
Twifo Oil Palm Plantations Ltd.
UBAG Unterflur Betankungsanlage Flughafen Zurich
Union Grafica, S.A.
United Kingdom Oil Pipelines Limited
W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabushiki Kaisha
Walton, Gatwick Pipeline Company Limited
Werner Weidemann Mineraloelvertrieb G.m.b.H.
Western Platinum Ltd.

West London Pipeline & Storage Limited
West Shore Pipe Line Company
Wilhelm Mertl GmbH & Co. KG
Wolverine Pipe Line Company
WBG, Warmeservice Gmbh
Wyco Pipe Line Company
Wymondham Oil Storage Co., Limited
Zaire Mobil Oil
Zaire Services Des Entreprises Petrolieres

Shell Western E&P, Inc.
Shell Oil Company

Butte Pipe Line Company
Cortez Capital Corporation
CRI Ventures, Inc.
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Explorer Pipeline Company
First Harlem Securities Corporation
Fractionation Research, Inc.
General Hydrocarbon Polymer Concrete Inc.
George Newman & Company
Glass-Steel, Inc.
Glastrusions, Inc.
Grande Ecallie Land Company, Inc.
Gravecap, Inc.
Heat Transfer Research, Inc.
Huntsman Chemicals, Inc.
Inland Corporation
Knytex, Inc.
Locap, Inc.
Lone Star Polymer Concrete Corporation
LOOP, Inc.
MESBIC Financial Corporation of Houston
Morrison Molded Fiber Glass Company
Oil Companies Institute for Marine Pollution Compensation Limited
Oil Insurance Limited
Olympic Pipe Line Company

Pecten Cameron Company
Pioneer Equipment Co.
Plantation Pipe Line Company
Plastibeton, Inc.
Polycon Research, Inc.
Premix/E.M.S. Inc.
Quazite Corporation
Royal Dutch Petroleum Company
Seadock, Inc.
Shell Petroleum N.V.
Shell Transport and Trading Company
Thums Long Beach Company
United Scientific, Inc.
Van Salt Water Disposal Company
West Shore Pipe Line Company
Wolverine Pipe Line Company
Wyoming Industrial Development Corporation

Sohio Slaska Petroleum Co.

The Standard Oil Company
Kennecott Corporation
Ress Realty Company
S. Minerals, Incorporated
Sohio Development Company
Sohio Chemicals & Industrial Products Company
Carborundum ASC Company (formerly Webb Paraguay, Inc.)
Carborundum Carobbean, Inc.
The Carborundum Company, Incorporated
The Carborundum Company of Puerto Rico
Carborundum Environmental Systems Canada, Ltd.
Carborundum International S.A.
Carborundum International Sales Corporation
Chase Nuclear (Canada) Limited
D-O Holding Company, Inc.
Dorcon (Canada) Limited
Dorr-Oliver (Brasil) Ltda.
Dorr-Oliver de Mexico, S.A.
Dorr-Oliver Engineering, Ltd.

Dorr-Oliver Export Company
Dorr-Oliver Incorporated
Dorr-Oliver (India), Limited
Dorr-Oliver International Inc.
Hindustan Dorr-Oliver Limited
Hitachi-Carborundum Yugen Kaisha (Hitachi-Carborundum Company)
Keeler/Dorr-Oliver Boiler Company (formerly E. Keeler Company)
Kennecott Canada Limited
Kennecott Ventures, Inc.
The National Filter Media Corporation
Performance Systems, Inc.
Pfaudler-Balfour, Limited
Pfaudler Development Corporation
QIT-Fer Et Titane Inc.
Quebec Metal Powders Limited Les Poudres Metalliques Du Quebec, Limitee
Seven Hundred Seven Development Corporation
Sohio Chemical Company
The Vistron Supply Company
Franklin Coal Company
Hinch Coal Mining Company
Kitt Energy Corporation
Old Ben Coal Company
Pike Coal Company
Royal Land Company
Upper Kittanning Inc.
Atlas Supply Company
BP Oil Inc.
Colonial Pipeline Company
Delaware Bay Transportation Company
East Texas Salt Water Disposal Company
Huron Liberian Company
Inland Corporation
Iricon Agency, Limited
Laurel Pipe Line Company
Miami Valley Corporation
Mid-Valley Pipeline Company

Mountaineer Carbon Company
Prospect International, C.A.
Sohio Alaska Transportation Company
Sohio Gas Pipeline Company
Sohio-Iran Trading, Inc.
Sohio Pipe Line Company
Sohio Supply Company
Sohio Transportation Company
Sohio Venezuela Company
Sohio Western Crude Oil Company
SPC Shipping Inc.
Truckstops Corporation of America
West Texas Gulf Pipe Line Company
BP Alaska Inc.
BP Communications Alaska Inc.
Sohio Alaska Petroleum Company
Sohio Algeria Company
Sohio Algeria Supply Company
Sohio de Colombia Company
Sohio Construction Company
Sohio Petroleum Company
Webb de Colombia, S.A.
Webb Drilling Company
Webb International Minerals, Inc.
Webb Tonga, Inc.
Monitor Insurance Company Limited
Sohio/BP Trans Alaska Pipeline Capital Inc.
Sohio Finance Company
The Standard Oil Company (Ohio) International N.V.
Kennecott
Apache Powder Company
Braden Copper Company
British Columbia Molybdenum Limited
Cobre Caribe S.A.
Denham Coal Management Pty. Ltd.
E. T. Irrigating Canal Company
Kenn Development Corporation
Kennarctic Explorations, Limited
Kennco Explorations, (Canada) Limited

Exploration Kennco, (Canada) Limitee
Kennco Explorations, (Western) Limited
Kennco (Stikine) Mining Limited
Kennecott Communications Corporation
Kennecott Explorations (Australia) Ltd.
Kennecott Explorations (New Zealand) Limited
Kennecott Minerals Company
Kennecott Phosphate, Inc.
Kennecott Santa Fe Corporation
Lark Water Users
North Jordan Irrigating Company
San Pedro Mining Company
Sohio Western Mining Company
Stikine Copper Limited
Utah and Salt Lake Canal Company
Ferix Corporation
Sohio Alternate Energy Development Company (formerly Sohio Coal Conversion Company)
Sohio Commercial Development Company
Sohio Shale Oil Company
Sohio Ventures Corporation (fomerly Vista Ventures Corporation)

Texaco Inc.

Abu Dhabi Asphalt and Lubricants Company, Limited
Aircraft Fuel Supply B.V.
Airport Refueling Services S.p.A.
AK Chemie GmbH
AK Deutsche Steinkohlenreviere GmbH
Aktiebolaget Djurgardsberg
Alberta Products Pipe Line Ltd.
American Overseas Petroleum Limited
Arabian American Oil Company
Associated Octel Company Limited, The
Association Petroliere Belge
AT&S Exploration Ltd.
Australian Lubricating Oil Refinery Limited
Aviation Fueling Services S.A.
Aviation Fuel Services Ltd.

Aviation Service Center
Badger Pipe Line Company
Bahrain National Gas Company (B.S.C.)
Bahrain Petroleum Company B.S.C. (Closed), The
Batangas Land Company, Inc.
Bayswater Nominees Pty. Limited
Bergemann KG
Boske & Co. Mineralolhandel GmbH
Braunkohle-Benzin AG
Bremer Mineralolhandel GmbH
Bunkerservice Brunsbuttel GmbH
Butte Pipe Line Company
Caltex Australia Limited
Caltex Deutschland GmbH
Caltex Mediterranean Limited
Caltex Petroleum Corporation
Caltex (Philippines) Inc.
Caltex Tanker Company (Australia) Pty. Limited
Canyon Reef Carriers, Inc.
Central African Petroleum Refineries (Private) Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chisholm Pipeline Company
Cla. Refinadora Petrolera Santo Domingo, Inc.
City Parkeergarage (City Parking) B.V.
Colonial Pipeline Company
Compagnie d'Entreposage Communautaire (C.E.C.)
Condea Chemie GmbH
Cynthia Gas Gathering Company Limited
Dannenberg & Co. Mineralolhandel GmbH
Deutsche Texaco Aktiengesellschaft
Deutsche Transalpine Oelleltung GmbH
Deutscher Kraftverkehr Ernst Grimmke GmbH
Dixie Pipeline Company
Drivmedelscentralen A.B.
El Capitan Mutual Water Company
Emirates Bunkering & Bitumen Company (Private) Ltd. "EBCO"
Erdgas-Berkaufs-GmbH

Explorer Pipeline Company
Fabricacion y Distribucion de Productas, S. de R. L. (FADIPCO)
Farmer Construction Limited
Federated Pipe Lines Ltd.
Felix Oil Company
Flexlbox GmbH
Forenade Svenska Oljeimportorers AB (FSOA)
Ghana Bunkering Services Limited
Gibson Holdings, Ltd.
Glen Park Gas Pipe Line Company Limited
Great Eastern Oil Ltd.
Hamburger Mineralol-Transport GmbH
Heddington Brokers Limited
Helzkraft Mineralol GmbH
Hertfordshire Oil Storage Limited
Honam Oil Refinery Company, Limited
Hunter Pipe Line Company Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iricon Agency Ltd.
Karl Becker & Co. Mineralolhandel GmbH
Karlsruhe-Stuttgart Rohrietung GmbH
Kashima Selkansho Co., Ltd.
Kaw Pipe Line Company
Kenya Petroleum Refineries Limited
Koa Oil Company, Limited
Koa Oil Overseas Co., Ltd.
Koa Petro. Gas Co., Ltd.
Knoops & Muller Mineralolhandel GmbH
Kudamatsu Joint Disaster Prevention Center
Kux & Krahn Mineraloele GmbH
Laurel Pipe Line Company
LOOP, Inc.
LOCAP, Inc.
Louis Hagel Mineralol-Handels-GmbH
LPG de Panama, S.A.
Lublend Limited
Maghrab Gaz S.A.

Mainline Pipelines Limited
Majik Markets Pty. Limited
Mdina Weave Ltd.
Mediterranean Refining Company
MHB Mineralolhandel GmbH
Milan Airport Refueling Services S.p.A. (MARS)
Mitsui Petro-Chemical Co. Ltd.
Mitsui-Texaco Chemicals Co. Ltd.
Montreal Pipe Line Limited
Motorway Services Ltd.
N. V. Rotterdan-Rjin Pijpleiding Maatschappij
Newcastle Pipeline Company Limited
New Zealand Refining Company Limited, The
Nippon Oil Staging Terminal Company, Limited
Nippon Petroleum Refining Company, Limited
Northern Tier Pipeline Company
Olympic Pipe Line Company
OMW Oberrheinische Mineralolwerke G.m.b.H.
Osaga Pipe Line Company
PT Caltex Pacific Indonesia
Pakistan Refinery Limited
Pars Investment Corporation
Pembroke Capital Company Inc.
Petrogas, S. A.
Philippine Petroleum Corporation
Phoenlcia Oil Company S.A.L.
Pipelines of Puerto Rico, Inc., The
Plastumar
Portland Pipe Line Corporation
Promotor de la Interconexion de las Gasoductos de la Costa Atlantica-"Promigas," S.A.
Quimica Industrial "FIDES" S. A.
Ranhoku Joint Disaster Prevention Center
Refineria Texaco de Honduras, S. A.
Rheem del Ecuador C. A.
Rhein-Main-Rohrietungstransportgesellschaft mbH
Royko Co., Ltd.
Ryoko Shoji Co., Ltd.
Sakae Kigyo Co., Ltd.

Salland Olie Maatschappij B. V.
Saudi International Petroleum Carrier Ltd.
Seminole Pipeline Company
Sierra Leone Petroleum Refining Company Limited, The
Singapore Refining Company Private Limited
Skandinaviska Raffinaderi Aktiebolaget Scanraff
Societa Italiana per l'Oleodotto Transalpino
Societa per Azioni Raffineria Padana Olil Minerali (SARPOM)
Societe Africaine de Raffinage S.A. (SAR)
Societe Agricole des Enterprises Petrolieres (SADEP)
Societe Anonyme de la Raffinerie des Antilles (SARA)
Societe Beige de Transport Par Pipeline
Societe Camerounaise des Depots Petroliers (SCDP)
Societe Dakroise d'Entreposage S. A. (SDE)
Societe de Cabotage Petrolier (PETROCAB)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage de San Pedro S.A. (SESP)
Societe d'Entreposage Petrolier au Burundi S.A.R.L. (SEP-BURUNDI)
Societe de Manutention des Carburants Aviation Dakar-Yoff (SMACADY)
Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)
Societe du Pipeline Sud-Europeen S.A.
Societe Gabonaise d'Entreposage de Produits Petroliers S. A. (SGEPP)
Societe Gabonaise de Petrole Texaco (S.A.R.L.)
Societe Gabonaise de Raffinage (SOGARA)
Societe Guineenne de Lubriflants et d'Embaliages (SOGUILUBE)
Societe Iviorienne D'Avltaillements Portuaries (SIAP)
Societe Ivoirienne D'Entreposage de Produits Petroliers (SIEPP)
Societe Ivoirienne de Futs et d'Embaliages (SIFEMBAL)
Societe Ivoirienne de Raffinage S.A. (SIR)
Societe Malienna d'Entreposage (SME)

Societe Nationale de Raffinage (SONARA)
Societe Tchadienne d'Entreposage de Produits Petroliers S.A. (STEPP)
Societe Togolaise d'Entreposage S.A. (STE)
South African Oil Refinery (Proprietary) Limited
Star Holdings Company Limited
Steag AG
Sungho Real Estate Company, Limited
Svensk Petroleumadministration A/B
Svensk Petroleum Forvaltning Aktiebolag
Svensk Petroleumlagring Tre AB
Sydney Metropolitan Pipeline Pty. Limited
Tadlagaz S.A.
Tankanlage Ruemlang AG (TAR)
Tanker Mooring Services Company Private Limited
Texaco Agro-Industrial (Nigeria) Limited
Texaco Alaska Inc.
Texaco Canada Inc.
Texaco Exploration Norawy A/S
Texaco Gabon
Texaco Ghana Limited
Texaco Maroc
Texaco Mexicana, S.A. de C.V.
Texaco Mineralolhandel Rhein-Hessen GmbH
Texaco Nigeria Limited
Texaco Norway A/S
Texaco Portugal Prospeccao e Producao, S.A.R.L.
Texaco Togo
Texas-New Mexico Pipe Line Company
Texoma Pipe Line Company
Thai Oil Refinery Company Limited, The
Thums Long Beach Company
Tide Water Oil Company (India), Limited
Toko Shokai Co., Ltd.
Tokyo Tanker Company, Limited
Total Centreafrincaine de Gestion (TOCAGES)
"Total-Texaco Mail" Societe de Distribution de Produits Petroliers
Transalpine Finance Holdings, S. A.

Transalpine Olleitung in Osterreich GmbH
Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc.
Trinidad Asphalt Holdings Limited
Trinidad Northern Areas Limited
Trinmar Limited
Trintovac Developments Limited
204383 Enterprises LImited
Union des Raffineurs Beiges
Union Oil Co., Ltd.
United Kingcom Oil Pipelines Limited
Unterflur-Betankungsanlage-A.G. (UBAC)
Warwickshire Oil Storage Limited
Wascana Pipe Line, Inc.
Wascana Pipe Line, Ltd.
West Australian Natural Gas Pty. Limited
West Australian Shore Pipe Line Company
Wichmann Beteiligungs-GmbH
W. Knierim & Co. Mineralolhandel GmbH
Wolverine Pipe Line Company
Wyco Pipe Line Company
Zaire Services des Entreprises Petrolieres (Zaire S. E. P.)
Zaire-Texaco S. A. R. L.
Zerssen Minerolhandel GmbH

Union Oil Company of California

Kaneb Services, Inc.
Magma Power Company
Union Exploration Partners, Ltd.